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# THE PROVINCE OF NEW JERSEY

1664-1738

BY

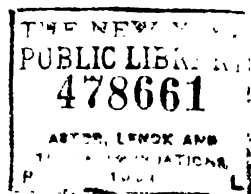
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SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENTS  
FOR THE DEGREE OF DOCTOR OF PHILOSOPHY  
IN THE  
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BY

EDWIN P. TANNER

## PREFACE.

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THE chief object of this study is to give an account of the political institutions of New Jersey during the period of her executive union with New York. The chapters on the proprietary period were originally prepared as introductory. A discussion of the economic and social development of the province is not a part of the problem.

The most important original sources in print used in this work are the *New Jersey Archives*, the *New York Colonial Documents*, Leaming and Spicer's *Grants and Concessions* and the Colonial Laws of Nevill and Allison. Nevill and Allison, however, give many important statutes only by title. Most, though not all, of the missing acts are to be found in the original Bradford prints in the Charlemagne Tower Collection of Colonial Law in the library of the Pennsylvania Historical Society. The rare *Elizabethtown Bill in Chancery* and the still rarer *Answer* to the Bill give invaluable information as to the land controversy in East Jersey. Their statements have, however, been received with caution as the arguments of contending lawyers.

The *Journal of the General Assembly* for the union period has been published (Jersey City, 1872) up to the end of Ingoldsby's administration. The rest is in manuscript in the State Library at Trenton. Other manuscript sources used are the *Minutes of the Supreme Court*, the *East Jersey Records*, the *West Jersey Records*,

*Liber AAA of Provincial Commissions, the Minutes of the Council of Proprietors of East Jersey and the Minutes of the Council of Proprietors of West Jersey.*

The *Minutes of the Supreme Court* in the office of the Clerk of the Supreme Court contain brief entries of the legal proceedings of the period, but do not give much light as to the nature of the issues involved. Where a decision was reached, however, judgment rolls exist containing the judgment of the court in full. The *East and West Jersey Records* in the office of the Secretary of State comprise the books of deeds, patents, wills, commissions and some surveys. Their general character is made clear by Vol. XXI of the *New Jersey Archives*, which contains a summary of the earlier books. The *Minutes of the Council of Proprietors of East Jersey*, still kept in the office of the proprietary register at Perth Amboy, throw much light on the activity of the proprietors of that division. Unfortunately Book A begins only with the reestablishment of the council in 1725. The office contains also eighteenth-century copies of the *East Jersey Records*. The *Minutes* of the West Jersey Council in the office of the Surveyor-General at Burlington are complete for the proprietary and union periods, and readily accessible through the courtesy of the proprietors and of the Surveyor-General.

In addition to original sources use has been made of numerous secondary works, especially those of Whitehead, Hatfield, Field, Brodhead and Winfield. The student of New Jersey history can not be too grateful for the able researches of these pioneers.

My best thanks are due to Mr. William Nelson, Secretary of the New Jersey Historical Society, for invaluable advice and assistance in obtaining access to material. I am also indebted to Mr. Francis M. Tichenor, Presi-

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dent of the Board of East Jersey Proprietors, for permission to examine the proprietary minutes. From the beginning I have had the advantage of the advice of Prof. H. L. Osgood. By him my first interest in colonial history was aroused; at his suggestion this work was undertaken; and without his patient encouragement its completion would have been impossible.

EDWIN P. TANNER.

*Syracuse, N. Y., Aug. 24, 1908.*





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## CHAPTER I

### THE PROPRIETORSHIP IN LAND

A clear understanding of the somewhat complicated legal questions arising in the Province of New Jersey during the proprietary period is most readily reached by drawing a sharp distinction between the proprietorship as a form of land ownership and as a grant of governmental power. It is the purpose of this chapter to trace the changes in the title to the soil of the Province under the British Crown down to 1703. During most of the period from the English conquest of New Netherland to the establishment of royal rule, the proprietors of New Jersey were maintaining a government over the province. But there is no necessary logical connection between the two phases of colonial proprietorship, and it will greatly facilitate our task to discuss them separately.

According to the English law of the seventeenth century the title to the entire eastern shore of North America extending through from sea to sea lay in the British Crown in virtue of the discoveries of the Cabots. This claim was of very doubtful justice, but it was made good by the superior colonizing abilities of England. As for the Dutch claims upon the Hudson and the Delaware, they were never expressly recognized by the British government.

The great patent of 1606 to the London and Plymouth

ments in this region. Again, in 1634, while New Netherland was actually in possession of the Dutch, King Charles I, probably through the influence of Strafford, granted the province of New Albion to the Roman Catholic, Sir Edmund Ployden. New Jersey was included within its limits. But Sir Edmund possessed neither the ability nor the means to make New Albion a second Maryland, and the grant became a dead letter.

The act of Charles II in granting, on March 12, 1664, to his brother James, Duke of York, an extensive American territory coinciding in part with New Netherland is to be looked upon as the first enduring legal separation of the soil of what was to be New Jersey from the English Crown. New Jersey was, however, merely included in the sweeping gift and was not yet in any way marked off from the adjoining territories. The patent made over to the Duke of York, in addition to certain territories in New England, Long Island "lying and being toward the west of Cape Cod" and all the mainland from the west bank of the Connecticut to the east side of Delaware Bay. All this territory was to be held by the Duke in free and common socage as of the manor of East Greenwich, subject to the rent of 40 beaver skins annually if they should be demanded.<sup>1</sup>

A few years later James undoubtedly estimated the importance of colonial affairs more justly than any of the other Stuarts. But this fact was, in part at least, the result of his connection with the maritime affairs of England as Lord High Admiral and of his experience as proprietor of New York. In 1664 he does not seem to have known accurately the true value of what he had obtained.

was to clear his property from the obstruction of Dutch occupation, was still on the ocean, and, of course, before New Netherland was actually in his possession, the Duke executed, on June 23 and 24, 1664, deeds of lease and release to Lord John Berkeley and Sir George Carteret, by which he made over to them all "that tract of land lying and being to the westward of Long Island and Manhitas Island and bounded on the east part by the main sea and part by Hudson's river and hath upon the West Delaware Bay or river and to the northward as far as the northermost branch of the said Bay or River of Delaware which is  $41^{\circ} 40'$  of latitude and crosseth over thence in a straight line to Hudson's River in  $41^{\circ}$  of latitude, which said tract of land is hereafter to be called by the name or names of Nova Cesarea or New Jersey." In return for this magnificent grant the Duke received merely a nominal remuneration. The lease for one year was made in consideration of the sum of 10s and subject to the rent of a peppercorn. The release provided for a rent of 40 nobles annually if demanded.<sup>1</sup>

That the Duke should make such a grant to Berkeley and Carteret, who were prominent and typical figures at the Restoration court, was however, very natural. The Restoration was a time of great revival of interest in the colonies, and both noblemen were already connected with colonial affairs as proprietors of the Carolinas. Berkeley and Carteret were, moreover, tried and true Cavaliers who had fought and suffered in the King's cause and to whom, therefore, the Stuarts were under real obligation.

But the location of the grant in the midst of the Duke's

New York, in his irritation at being deprived of the territory, declared indeed that the gift was due to the machinations of Capt. Scott, the adventurer, whose claims upon Long Island had been passed over and who had other grievances against the Duke as well. Nicolls thought that this man in spite had influenced Berkeley and Carteret to ask for the land in question, knowing that James would thus lose much of his finest territory.<sup>1</sup> There is, however, no further evidence of such an intrigue.

But the eyes of James were soon opened to the mistake which he had made. As soon as he heard of the grant, Gov. Nicolls wrote to the Duke protesting.<sup>2</sup> He stated that Berkeley and Carteret doubtless did not know how damaging their colony would be to the Duke and suggested that they be urged to take instead a grant lying along the two shores of the Delaware.<sup>3</sup> Later, Samuel Maverick, one of the royal commissioners to New England, added his protest.<sup>4</sup> When, moreover, in 1668 Nicolls returned to England, he seems to have done all in his power to convince the Duke of the necessity of undoing the grant, if it was in any way possible.<sup>5</sup> James for once appears to have been convinced, and when determined upon advancing his own interest he was never backward. His first step was the recovery of Staten Island which was taken from New Jersey upon the technicality that one arm of Hudson's River flowed around it.<sup>6</sup> As the deeds making over the land to Berkeley and Carteret were undoubtedly legal, it is difficult to see how more could have been accomplished by active aggression.

<sup>1</sup> *New Jersey Archives* (first series), vol. i, p. 46.

<sup>2</sup> *Ibid.* vol. i, p. 46. <sup>3</sup> *Ibid.* vol. i, p. 46. <sup>4</sup> *Ibid.* vol. i, p. 46.

But circumstances almost enabled the Duke by pacific means to regain what he had lost. Lord Berkeley was never much interested in the new lands, and just at this time he fell into disgrace at court owing to charges of corruption. He therefore offered to surrender his interests to James and to receive lands on the Delaware instead. Sir George Carteret also agreed to the exchange, and arrangements were almost concluded. But for some reason which can now only be surmised, though probably connected with the claims of Lord Baltimore to the western shore of Delaware Bay, the transfer fell through.<sup>1</sup>

The Dutch reconquest of New Netherland and the subsequent return of the country into English hands, however, gave James a golden opportunity, for by such conquest and recession, (according to the principles of English law, all former grants and patents were annulled, and the whole territory once more fell directly beneath the power of the British Crown.) The Duke of York at once obtained from his brother a new patent reconveying to him all the American territories which the former grant of 1664 had given him. This was essentially a new grant and did not even allude to the former one. It of course included New Jersey with the rest of the territory conveyed. Thus James was master of the situation by every legal principle and had recovered all his lost ground.<sup>2</sup>

*Sir Wm  
Jones  
att'y gen'l  
did not  
say it  
did.*

?

But meanwhile other events had taken place altering the situation. Down to March 18, 1673-4, Berkeley and Carteret had continued as joint proprietors of New Jersey, having never made any division of the lands between them. But Berkeley soon saw the difficulties which must be en-

new country. He had little interest in America and was anxious only to come out of the whole affair without loss. Therefore, on the above-mentioned date, he sold out his undivided share of New Jersey to ~~two~~ members of the Society of Friends, John Fenwick and Edward Byllinge, for the sum of £1000. This purchase was, of course, a bargain.<sup>1</sup> But the Friends were unfortunate in that it took place just after the Dutch reconquest of July, 1673. By this reconquest, as has been pointed out, the claims of the English Proprietors were forfeited. Byllinge and Fenwick might, however, justly look to the English Crown for compensation since the Treaty of 1674 had restored the country to England.

Nevertheless the purchase of 1673-4 is an event of the greatest historical significance for it marks the beginning of the first great Quaker experiment in American colonization. It is unnecessary to trace here the work of George Fox and the growth of the Society of Friends in England, nor have we time to examine the disabilities and persecutions to which those devoted people were subject there. Unfortunately it is not easy to trace in detail the development of the idea of colonization among them. The burning zeal of the early Friends had driven them to endure in the plantations a persecution as bitter as that in the motherland itself, and their heroic missionary efforts had been crowned by considerable success. But as yet there had been no attempt at the creation of a Quaker commonwealth in America.

<sup>1</sup> Byllinge and Fenwick were described as "gentlemen of West-



of the Friends. He seems, however, to have been a self-assertive person, by no means entirely weaned from the instincts of the "world's people."<sup>1</sup> But as the purchase of a share in New Jersey was simply made by Fenwick in ~~trust for Byllinge~~, the latter was the person chiefly concerned.

There is no direct evidence to show whether Byllinge had in mind originally the founding of a refuge for his sect in America or whether his investment was simply a business transaction. Later events surely indicate that the motives were combined. A group of Friends was already settled upon the soil of New Jersey at Shrewsbury, one of whom was the brother of a well-known London upholsterer.<sup>2</sup> Moreover, during the period from 1671-3, Fox himself was traveling and preaching in America and, as his route from Maryland to New England took him directly across New Jersey,<sup>3</sup> the student can scarcely help inferring a connection between his journey and the purchase, though Fox himself says nothing to indicate it. At any rate William Penn was closely associated with Byllinge, and the leading part he subsequently played in the affairs of West Jersey makes it probable that ~~he was the real instigator of the purchase.~~ It is certainly clear that the whole Society of Friends soon came to be behind the attempt and that upon the success or failure of West Jersey depended the extent of their subsequent operations in America.

But though the claims of Berkeley, such as they were, to the soil of New Jersey thus passed into the hands of men of an entirely different stamp, Sir George Carteret did not, like his associate, wish to retire from colonization. In

<sup>1</sup> *New Jersey Archives* (first series), vol. i, p. 185, note. Johnson, *Salem* (Philadelphia, 1839), pp. 29-34.

<sup>2</sup> *Journal of George Fox* (Philadelphia, undated), p. 449.

<sup>3</sup> *Ibid.*, pp. 449-508, 453-455.

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spite of various troubles the planting of Nova Caesarea had made good progress, and he did not wish to abandon it. He realized, however, the necessity of obtaining a proper legal basis for his claims and therefore exerted his influence at court to secure the renewal of his grant. King Charles, as usual, was ready to please the staunch old Cavalier, and several weeks before the Duke took out his second patent, he signed a letter setting forth that Carteret was legally seized of the Province of New Jersey.<sup>1</sup> How the king could do this without making a formal grant of the province to Carteret is an enigma, for at the time the province legally belonged to Charles himself and to no one else. And moreover, a royal patent was about to be issued giving both it and the adjoining districts to James.<sup>2</sup> However, as the letter was unofficial, we may disregard it as of no legal value.

Yet it was a foretaste of Carteret's success, for soon after he actually succeeded in getting from the Duke of York, by exactly what means we cannot say, a formal reconveyance for a portion of the former province of New Jersey.<sup>3</sup> He was to have all north of a line drawn from Barnegat to a certain creek on the Delaware next below Rankokus Creek, an arrangement which gave Carteret more than half of the territory.<sup>4</sup> Carteret's province was once more called New Jersey. James himself later said that the new conveyance was obtained from him "by surprise," but this is obscure. It is more likely that Carteret's influence was too strong for the Duke. He was, moreover, a man of hot temper and much determination, whom it would be unwise

for James to antagonize as things then stood in England.<sup>1</sup> At any rate the fact of the new grant remains clear and certain, and from this time on the title of Carteret to the soil of such land as the conveyance covered was never legally called into question.

There still remained, however, the question as to the title of the remainder of the original New Jersey grant. The Quaker assigns of Berkeley acted as if they supposed that the residue necessarily came into their possession in spite of the Dutch reconquest. In so far as concerns their relations with the Duke of York, their conduct is certainly characterized by the utmost straightforwardness and simplicity of mind. In their relations with each other, however, this simplicity is not so apparent. Almost immediately a difficulty arose between Byllinge and Fenwick as to what interest each of them held in the new region. As they could not agree, they eventually submitted the question to the arbitration of William Penn, whose commanding influence among his co-religionists is thus very clearly shown. After due consideration he awarded nine-tenths of the territory to Byllinge and one-tenth to Fenwick, with a considerable sum of money.<sup>2</sup> But a set of curious complications soon upset this arrangement. Byllinge met with business reverses, and, as he did not wish to surrender the new undertaking, he made over his interest in New Jersey to William Penn, Gawen Lawrie, and Nicholas Lucas, to be held in trust for his creditors. The fact that these three prominent Friends thus assumed the chief management of affairs is one of the clearest indications that the entire Society was interested in the attempt of Byllinge.<sup>3</sup>

And now Fenwick also lost legal control of his portion. He had begun at once to make preparations for a settlement in person and in addition sold portions of his land to others. But before he set out he was forced to obtain a loan from John Elbridge and Edmund Warner, two well-known Friends, and as security for the payment of this and other debts gave them a lease of his part of the Province for 1000 years with the power to sell enough to reimburse them for the loan. This transaction, of course, really took all control out of Fenwick's hands.<sup>1</sup>

Meanwhile, Penn, Lucas, and Lawrie were pushing matters and succeeded in settling the claims of Byllinge's creditors in great part by satisfying them with land.<sup>2</sup> But the trustees were not content with the division of New Jersey as provided for by the Duke's grant to Carteret and determined to bring about if possible an arrangement more to their own advantage. It was thought expedient, in order to accomplish this, that the whole of the Quaker portion of New Jersey should be placed under the direct control of the representatives of Byllinge. Therefore Elbridge and Warner made over to them all that part which they had obtained from Major Fenwick.<sup>3</sup> The trustees of Byllinge, thus having complete charge of the Quaker interest, forthwith addressed themselves to Sir George Carteret and without difficulty obtained a new division of the province, that nobleman being persuaded by the Duke of York to surrender his advantage.<sup>4</sup> A line was now agreed upon beginning at Little Egg Harbor and running to a point on the Delaware in 41° north latitude which was in future to be the boundary

<sup>1</sup> Mulford, *op. cit.*, p. 167; Johnson, *Salem*, p. 56.

<sup>2</sup> Mulford, *op. cit.*, p. 169; *West Jersey Records*, liber B (part i).

<sup>3</sup> Mulford, *op. cit.*, p. 170.

<sup>4</sup> Whitehead, *East Jersey under the Proprietors*, p. 86.

between East and West New Jersey as the two portions were now definitely christened. The document by which this arrangement was effected was signed by Carteret, Penn, Lucas, Lawrie, and Byllinge, and is therefore known as the Quintipartite Deed.<sup>1</sup> There is nothing to indicate that the Friends knew how greatly the new division was in their favor, but it gave West Jersey approximately 4,595 square miles as against 2,981 for East Jersey. Inasmuch as the Quaker claims to any part of New Jersey were from a strictly legal point of view invalid, the power of Byllinge's trustees to make any rearrangement of the territory was naturally nil. Nevertheless, as the claims of the Friends were eventually made good, and as the line thus laid down really came to be the division between two distinct provinces and land systems, the Quintipartite Deed must be regarded as an important mark in New Jersey history. From this time on until the establishment of royal government we are dealing with the history of two clearly separate colonies, —East and West Jersey.

After the transaction had been completed, Penn, Lawrie, and Lucas reconveyed Fenwick's tenth to Elbridge and Warner but now made it over to them in fee simple, thus cutting off any possible reversion to Fenwick or his heirs. This was a sharp practice, though perhaps legal.<sup>2</sup> But Fenwick complained loudly that he had been defrauded of his rights. He refused to recognize the validity of what had been done and continued to style himself chief proprietor of West Jersey.<sup>3</sup> In 1675 he had established a colony at Salem,<sup>4</sup> but before his relations with the legitimate proprietors could lead to serious difficulty he became involved in

forcibly removed from the scene of action.<sup>1</sup> After the rights of Fenwick had been thus put aside, Elbridge and Warner were joined with Byllinge and his trustees as regular proprietors of West Jersey and, as such, participated in action taken with regard to the province.<sup>2</sup> But Fenwick resolutely maintained at least his claims against the West Jersey proprietors until 1682, when a peaceful settlement was at length effected by William Penn. In September of that year the shares of Elbridge and Warner were made over to Penn, and in March, Fenwick released all his estate in the province to the same person,<sup>3</sup> except the tract known as Fenwick's Colony containing 150,000 acres.<sup>4</sup> To this land his right was recognized, but henceforth Penn was acknowledged as owner of the one-tenth interest in the proprietorship which had been under dispute.

From this point the study of the relations of the various claimants to proprietorship in New Jersey is much complicated by the continued dispute carried on between the Duke of York on the one hand and Carteret and the assigns of Berkeley on the other as to the right of the latter to exercise governmental rights over the province. With this matter we are, of course, not in this chapter concerned. In the case of the Quaker claimants to West Jersey, however, the conflict necessarily involved also the validity of the claims of Penn and his associates to the soil of West Jersey and is therefore of great account in our present consideration. From the signing of the Quintipartite Deed the Quakers were engaged in a desperate legal struggle to make good

their claims. It would seem that, when the legal basis of their case was so weak, the result must have been a foregone conclusion, especially when they were pitted against James Stuart. But such was not the case. Penn and his associates handled the matter with great skill. This, moreover, was just the time when James, threatened by the Exclusion Bill, was obliged to retire to Scotland to avoid the outcry raised against him, and when he was most anxious to rid himself of all further causes of complaint at any sacrifice whatever. West Jersey was a small thing to weigh against the crown of England. Unwilling to alienate the influence of Penn at court and throughout the country, the Duke was finally led to leave the entire controversy to the decision of Sir William Jones, an eminent lawyer, indeed, but one of his most bitter opponents.<sup>1</sup>

The result was what the Friends must have anticipated. They argued their case with shrewdness, and Sir William decided against the Duke in every particular. His brief opinion mentioned the original grant of New Jersey to Berkeley and Carteret (but referred in no way to the Dutch reconquest and its results.)<sup>2</sup> But whatever objections may be brought against the arbitration, James was in no position to stand out against it. Without waiting even for the advice of his own counsel he executed a deed making over whatsoever rights he had to the soil of West Jersey to the Quaker proprietors. It is even said that this deed of release was presented to the Duke by Byllinge himself. It is certainly significant that it recites most carefully the several conveyances which had taken place and makes special mention of the Dutch reoccupation.<sup>3</sup> At any rate the con-

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<sup>1</sup> *Deadhead New York vol. ii. pp. 228-229*

troversy was definitely settled. The entire soil of Nova Caesarea had slipped from the grasp of the Duke.

It now remains for us to trace the proprietorships of East and West Jersey down to 1703, the date of the establishment of royal government. It will be most convenient to consider West Jersey first. It was apparently never the intention of Byllinge and his associates to retain any general proprietary rights to the soil of their whole province. In March, 1676 in the "Concessions" issued by the West Jersey proprietors, a definite arrangement was set forth by which proprietary rights could be acquired.<sup>1</sup> The entire province of West Jersey was to be divided into 100 equal parts to be known as proprietries, and these were to be grouped into ten larger divisions known as tenths. Persons purchasing tenths or proprietries were to be recognized as proprietors. One-tenth was of course recognized as belonging to Elbridge and Warner, and two other tenths were disposed of at once to creditors of Byllinge. One of these was made over to five Friends of Yorkshire, Thomas Hutchinson, Thomas Pearson, Joseph Helmsley, George Hutcheson and Mahlon Stacy, for consideration of sums of £2450 and £1050 due to them from Byllinge.<sup>2</sup> The other tenth was acquired by a group of London Quakers,<sup>3</sup> who selected as their commissioners John Penford, Thomas Olive, Daniel Wills and Benj. Scott.<sup>4</sup> But neither of these associations contemplated the establishment of consolidated landed interests. The Yorkshire group began at once to dispose of portions of their tenths to other parties. The London Quakers do not appear to have acted collec-



fractions of their interests. Thus the number of proprietors increased rapidly. And this effect was further increased by additional sales of shares from Byllinge and his trustees.<sup>1</sup>

Several sales of whole proprieties are recorded. But from the beginning it appeared that this unit was too large, and fractions of proprieties were sold. For example, on February 28 and March 1, 1676, Byllinge and his assigns sold one propriety to William Peachy. Byllinge received £350 and Penn, Lawrie, and Lucas 5s. each.<sup>2</sup> This seems to have been the standard price. But the propriety was divided as follows: Wm. Peachy one-eighth, John Cripps one-eighth, Thomas Doll one-eighth, Richard Smith one-eighth, Richard Mathews one-eighth, Henry Stacy one-eighth, Wm. Kent one-eighth, and Wm. Drewitt one-eighth. In the same month of the same year Thomas Budd obtained a propriety on similar terms.<sup>3</sup> In February, 1683 he sold one-eighth of this to William Budd.<sup>4</sup> In September, 1682 another one-eighth had been sold for £50 to John Gosling.<sup>5</sup> And so the process went on. But the fractions in many cases kept growing smaller. Thus the Wm. Kent above mentioned, in July 1678, sold one-fourth of his one-eighth of a share to Wm. Muliness.<sup>6</sup> All sorts of fractions of proprieties were sold, but those most usual were fourths, eighths, sixteenths, thirty-seconds and sixty-fourths. The subdivision of shares was, also, in some cases the result of inheritance. Of larger sales perhaps the most notable was that of April, 1677, from the proprietors to Robert Turner and four other Irish Friends. This included an entire propriety.<sup>7</sup> In most cases the early purchasers of proprietary interests were Friends, and the greater number of sales of shares in the Yorkshire Tenth

were to persons resident in the north of England. The great majority of those holding shares removed to the province.

Thus the entire character of the West Jersey proprietorship changed. The old feudal element was gone, and the proprietors became merely a numerous body of land owners. As to the exact number holding proprietary interests down to 1702 no definite statement can be made. Many shares were never claimed at all; others were not recorded and so lost.<sup>1</sup> In 1687 when the council of proprietors was established, an important agreement was signed by 31 residents of the province,<sup>2</sup> each of whom held at least an interest of one thirty-second of a propriety, and this did not include the eleven members of the council itself. After Penn directed his attention chiefly elsewhere, no one man of commanding ability and influence appeared among the West Jersey proprietors to take his place. The most notable names among them are those of the shrewd and courageous Samuel Jennings and the respected Thomas Olive. Others who took a prominent part in proprietary affairs were Francis Davenport, John Reading, William Biddle, Peter Fretwell, Thomas Gardiner, Sr., and Thomas Gardiner, Jr., who was surveyor general after 1694.

But, in spite of the various sales and transfers, the interests of Edward Byllinge continued to predominate down to his death in 1687. His entire holdings then passed by purchase from his heirs into the hands of Dr. Daniel Coxe. Dr. Coxe was a well-known personage, being physician to the Queen of Charles II and later also to Anne.<sup>3</sup> He was

<sup>1</sup> Stokes, in *Proceedings of the West Jersey Surveyors' Association* (Camden, 1880), p. 48.

an energetic and ambitious man whose object at this time was apparently to imitate the achievements of William Penn.<sup>1</sup> Coxe afterward speculated rather extensively in colonial land claims, being remembered especially as the purchaser of Sir Robert Heath's patent of 1629 for "Carolina," the continued validity of which he endeavored to secure.<sup>2</sup> But as Coxe was not a Friend his operations were regarded rather coolly in West Jersey.<sup>3</sup> The court physician had difficulty, however, in securing the recognition of his claims to governmental control over the province and soon decided to withdraw from his venture. Accordingly, in 1691, he sold out the greater part of his interest to a company known as the West Jersey Society.<sup>4</sup> According to the deeds of lease and release, about 20 proprietries in West Jersey, together with certain interests in East Jersey, Pennsylvania, and New England passed over to the new investors in consideration of 4,800 pounds. The names of 48 persons appear on the release as belonging to the society. Sir Thomas Lane was its first president, Edmund Harrison its vice-president, and Robert Hackshaw treasurer. The Society's articles of agreement state its purpose as "our mutual benefit, profit, and advantage," as well as "the better and more orderly managing and improving of the said hereditary government, lands, and tenements." The stock was divided into 1600 equal shares, and the holding of two of these was required for the privilege of voting at the annual meeting for the election of officers. The actual business management rested in the hands of a committee, which had power to sell and dispose of all lands. The

<sup>1</sup> Smith et al. v. 101 (note)

possession of twenty shares was required for being of the committee.<sup>1</sup> The workings of the society, however, were not smooth. As usual, the number of share holders was largely increased by the sale and inheritance of shares, and confusion resulted. Another distracting element was thus added to the complexity which already characterized the proprietorship of West Jersey. The West Jersey Society continued to carry out its operations from London, and the controlling element at any rate was non-Quaker.<sup>2</sup>

Dr. Coxe subsequently conveyed to his son, the famous Colonel Daniel Coxe of the Royal Period, all the remainder of his interests.<sup>3</sup> An investigation made by the council of proprietors in 1714 showed that Col. Coxe held legal title to approximately four proprietries,<sup>4</sup> the largest single interest in the province with the exception of those of the West Jersey Society and of Penn. But the uncertainty which had previously existed as to the validity of the claims of the Coxes after 1691 was a source of annoyance and difficulty in proprietary affairs.

The council of proprietors, which came into existence in West Jersey in 1687, did something to bring unity into the proprietary management. In February of that year a general meeting of all persons having proprietary interests was held at Burlington, and a body of eleven commissioners established, to be chosen annually and to have general charge of all matters touching the common interest. All persons holding one thirty-second of a propriety were admitted to vote.<sup>5</sup> The institution of the council gave a consider-

<sup>1</sup> *New Jersey Archives* (first series), vol. ii, p. 73.

<sup>2</sup> John Clement, "The West New Jersey Society" in *Proceedings of the West Jersey Surveyors' Association*, pp. 118-148.

<sup>3</sup> *Ibid.*, p. 120.

<sup>4</sup> *Minutes of the Council of Proprietors of West Jersey*, bk. iii, p. 110.

<sup>5</sup> *Ibid.*, bk. i, p. 1.

able degree of unity to the affairs of the American proprietors despite the unwieldy character of the system. The members of the council were usually persons possessing the public confidence, like Jennings and Olive. There was, indeed, some little complaint on the part of a minority that the commissioners sought their own interest.<sup>1</sup> But on the whole, things moved harmoniously. The chief cause of trouble was, of course, the fact that the proprietors in England were too far removed to coöperate effectively. Such, then, was the condition of affairs when, in 1702, West Jersey came under royal government. The student who comprehends it will readily understand numerous later developments which would be otherwise obscure.

Meanwhile a very similar result had curiously enough come about in East Jersey in spite of the feudal character of Carteret's original undertaking. During his lifetime Sir George remained the sole proprietor to the soil of East Jersey. But in 1680 the gallant old Jerseyman died and left his wife, the Lady Elizabeth, executrix and guardian of his grandson and heir. He devised to Earl Sandwich, Earl Bath, Hon. Bernard Grenville and others, with other lands, his property in East Jersey in trust for his creditors. These gentlemen, after some private negotiations of which we know little, put up the province at public sale,<sup>2</sup> and it was purchased by William Penn and eleven other Friends for £3,400, a smaller sum than the Yorkshire group paid for one-tenth of West Jersey. Their deeds of lease and release bore date of February 1 and 2, 1682.<sup>3</sup>

The ventures of the Society of Friends in West Jersey had been, all things considered, exceedingly successful, and this is the direct explanation of the extension of their oner-

ations to East Jersey and Pennsylvania. Among the twelve original purchasers of East Jersey, none except Penn was of great importance. Robert West and Thomas Rudyard were well-known London lawyers, the latter having apparently been Penn's counsel when he was tried for holding illegal religious meetings.<sup>1</sup> The rest were merchants and tradesmen, among them Hugh Hartshorne, brother of one of the early settlers of Middletown. But immediately each of the twelve made over one-half of his interest to an outside party, thus raising the number of proprietors to twenty-four. The new proprietors, however, were a strange comingling of creeds, nationalities and religions.<sup>2</sup> The five most prominent men among them were Scotch. These were the Papist Earl of Perth, who virtually conducted the government of Scotland under King James; James Drummond, his brother, later Viscount Melford; the great Quaker philosopher, Robert Barclay, known as the author of the celebrated 'Apology for the People Called Quakers' and second only to Penn among the Friends; David Barclay, his brother, and Robert Gordon. Arent Sonmans was a Hollander resident in Scotland. Thomas Warne and Robert Turner were merchants of Dublin. The list also included Edward Byllinge and Gawen Lawrie.<sup>4</sup>

Various reasons have been offered to account for the peculiar personnel of the "twenty-four." But the majority were Quakers, and the others were persons of especial influence or means who were enlisted to make the enterprise a success. The political alliance between the Friends and the supporters of James Stuart is well known to all students of English history, and Perth and Melford were

safe inference from later events that the purchasers of East Jersey were not actuated by political and religious motives to the same extent as the proprietors of West Jersey and Pennsylvania. The purchase of East Jersey was a business investment.

In order to prevent any further possibility of conflict over the title, the twenty-four proprietors took the precaution of securing directly from James of York an entirely new grant for East Jersey according to the bounds of the Quintipartite deed.<sup>1</sup>

But the number and scattered condition of the proprietors made unity of action difficult. And this tendency was increased by the transfer and especially by the subdivision of interests which, just as in West Jersey, began immediately. The removal of several of the proprietors to the province also added an element of confusion. At the end of five years important changes had taken place.<sup>2</sup> Perth and Melford had, of course, retained only fractions of their interests and were soon to be removed from further participation in proprietary as well as other affairs by the overthrow of the Stuarts. Penn always retained his interest, but his chief efforts now centered in his own province. Of the remaining shares all but four had in effect been divided, several into small fractions like twentieths and thirty-seconds. The largest single interest was held by the estate of Arent Sonmans who, in 1683, had been shot by a highwayman. This consisted of  $5\frac{1}{4}$  shares.

The Scotch proprietors certainly manifested more interest in the province than the English. But the most active individual among the proprietors was William Dockwra, who had acquired half the share of Richard Mew and fractions of other interests. Dockwra was a merchant of

<sup>1</sup> *New Jersey Archives* (first series), vol. i, p. 383.

<sup>2</sup> *Ibid.*, vol. i, p. 528.

London, who was well known as the successful manager of a penny post in that city.<sup>1</sup> Such was the confidence felt in him and such the difficulty of securing co-operation among the proprietors that in 1686 he was appointed agent, and all documents signed by him were to have the same validity as if signed by the major part of the shareholders.<sup>2</sup>

The difficulties caused by the removal of proprietors to East Jersey were diminished by the establishment, in August 1684, of the "board of proprietors" consisting of all proprietors present in the Province and resembling closely the later council of proprietors of West Jersey. Acting with the deputy-governor, it had control of all matters relating to the proprietary interests and especially of transfers of land.<sup>3</sup>

The members of this board certainly did constitute in a sense a provincial aristocracy, although they were regarded with dislike by a large element in the population. This feeling was intensified by the fact that the most prominent of the proprietors in East Jersey were Scotch,<sup>4</sup> and that they resided chiefly at Perth Amboy. Among this group John Barclay, brother of Robert and David Barclay, George Willocks, at one time proprietary agent for the sale of quit-rents, Thomas Gordon, and Peter Sonmans, eldest son of Arent Sonmans, were conspicuous.<sup>5</sup>

But the ablest man among the later proprietors was undoubtedly Col. Lewis Morris. Col. Morris was the nephew and adopted son of Col. Lewis Morris of Barbadoes and hence a member of that great family which produced so

<sup>1</sup> Whitehead, *op. cit.*, p. 216.

<sup>2</sup> *New Jersey Archives* (first series), vol. i, p. 506.

<sup>3</sup> *Elizabethtown Bill in Chancery*, p. 16.

<sup>4</sup> *New Jersey Archives* (first series), vol. iii, p. 14.

<sup>5</sup> Whitehead, *Contributions to the Early History of Perth Amboy* (New York, 1856), pp. 43, 60, 75, 80.



many distinguished public men. Though of Welsh descent he was born in his father's manor at Morrisania, New York, and bred in America. Because of the great family interests in New York he appears almost as prominently in the affairs of that colony as in those of New Jersey, and his entire career from his entrance upon public life in 1692 is sufficient proof of his unusual energy and ability. Morris appears to have been, however, masterful in disposition and perhaps a little eccentric, a man to raise difficulties rather than to quiet them.<sup>1</sup>

Well indeed would it have been for the proprietors if they could have worked in harmony. But it was perhaps hardly to be expected that the division of so great a stake as the soil of East Jersey could be accomplished among men of such varying interests without acrimony. The clash naturally came between Dockwra and the Scotch Perth-Amboy group, represented especially by George Willocks. In August, 1701, Willocks appeared before the governor and council of East Jersey and formally accused Dockwra of usurping power and of being guilty of fraud in the taking up of lands. A petition was also presented from certain of the resident proprietors asking that Dockwra be suspended from his office of chief secretary and register. But the government of East Jersey would do no more than recommend to the proprietors in England that Dockwra be suspended unless he disprove the accusations.<sup>2</sup>

Thus attacked, Dockwra and his allies, among whom Peter Sonmans was most conspicuous, adopted the desperate course of joining with the foes of the proprietary order in East Jersey and casting their influence with the home

<sup>1</sup> *The Papers of Lewis Morris, Collections of N. J. Hist. Soc.*, vol. 1, Introduction, Memoirs.

government against Morris and the Scotch interest.<sup>1</sup> This clash of interests undoubtedly weakened the proprietorship in its struggles against the forces of disorder in the Province and complicated the many questions to be settled when the proprietors were at length compelled to surrender their political powers to the Crown.

Thus, though the conditions of the proprietorship in East Jersey in some respects resembled those of the sister province on the Delaware, the advantage from the point of view of the public interest was decidedly with the latter. Yet, as we shall see, the proprietors of East Jersey had by far the greater obstacles against which to contend. In both the Jerseys results had come about entirely unlike those in any other northern colony and resembling only remotely the developments in the Carolinas. The changes in the proprietorships of the Jerseys during the period immediately before the institution of the Royal Government indicate also in an unmistakable way the coming of a new century in which new ideals and motives were to prevail. The New Jersey of Carteret and of Penn had been replaced by the New Jersey of Dockwra, of Willocks and of the West Jersey Society.

<sup>1</sup> Whitehead, *East Jersey under the Proprietors*, p. 217.

## CHAPTER II

### SOURCES AND CHARACTER OF THE POPULATION OF THE JERSEYS

WHILE it is impossible in a brief study of this character to give any lengthy description of the original settlement of the Jerseys, certain facts concerning their colonial population which had great effect upon the development of their institutions must be pointed out.

The Dutch efforts to colonize in the territory which later became New Jersey were certainly a failure, owing partly to the hostility of the Indians. As a result of their attempts there remained at the time of the English conquest only the small though compact settlement at Bergen and a few scattered boweries along the Hudson.<sup>1</sup> The Dutch element thus established in the population of the province persisted, however, and was reinforced during the English rule by the further removal to New Jersey of Dutch settlers from New York.<sup>2</sup> In what later became Bergen County the Dutch continued to predominate. They made themselves felt in the politics of the colony, nevertheless, mainly by their inactivity, for they evidently shared in only a small degree the thoughts and feelings which actuated the rest of the population.

The real development of East Jersey was due to the great<sup>4</sup> wave of immigration which came from New England,

<sup>1</sup> Winfield, *History of Hudson County* (New York, 1874).

<sup>2</sup> There was also an interesting Huguenot settlement on the Hackensack.

chiefly by way of Long Island, as soon as English authority was established. The greater part of the New England settlers were from the old jurisdiction of New Haven<sup>1</sup> and thus represented one of the most extreme types of New England training and thought. To them proprietary institutions with their semi-feudal incidents were not only unfamiliar but repugnant. The immigrants settled in "towns" in true New England style and conducted their public business by town meeting. As a preliminary step to founding their new towns they bound themselves into associations, regulating by mutual agreement the distribution of lands and other town relations. But though the settlers of Elizabethtown and Newark seem to have been Puritans of a rather reactionary type, in the other towns signs of religious indifference were not lacking.

The settlement of the Monmouth tract was, however, somewhat distinct from that of the rest of East Jersey. Though the original colonists were themselves mainly from Long Island, they were Quakers and Baptists, receiving sympathy and support from Rhode Island rather than Connecticut or New Haven.<sup>2</sup> For some time their relations with the men of Elizabethtown and Newark were by no means close.

Thus three zones of colonization can be distinguished in East Jersey: the Dutch zone in Bergen County, the Connecticut zone covering the original Essex and Middlesex Counties, and the Rhode Island zone in Monmouth.

Though a few colonists are known to have arrived direct from England or from the southern colonies and the West Indies, their relative number was small during the pro-

prietorship of Carteret. Several of these persons were, however, men of influence.<sup>1</sup>

But with the establishment of the power of the twenty-four proprietors came several changes. Though immigration from New England continued, it now took the form of merely individual removal. On the other hand the new owners of the province encouraged emigration from the Lowlands of Scotland, where the Covenanters were undergoing their cruel persecution at the hands of the Stuarts. The religious and social difference between the incoming Scotch peasants and the older "planters" was certainly not great and therefore assimilation was not difficult. The newcomers were, however, without the peculiar New England training and instincts, and moreover, in the days before the Union, the old national jealousy of England and Scotland was still intense.<sup>2</sup> Much therefore as New Jersey later owed to the sturdy Scotch element among her people, their arrival certainly did something to increase her discord.

The Scotch influence, however, made itself felt most immediately by the settlement of many of the Scotch proprietors themselves in Perth Amboy and vicinity. Few of the larger English shareholders removed to the province. But Barclay, Gordon, Willocks, Johnstone and others undoubtedly constituted a sort of Scotch aristocracy which became one of the great political forces in the colony.<sup>3</sup> These wealthier Scots were, it may be noted, chiefly supporters of the Church of England,<sup>4</sup> and Willocks, at least, was a

<sup>1</sup> Notably Robert Vauquillin and James Bollen, who accompanied Governor Philip Carteret from England; and the West Indians, John Berry and William Sandford.

<sup>2</sup> *New Jersey Archives*, vol. i, p. 288; vol. ii, p. 544; vol. iii, p. 14.

Jacobite.<sup>1</sup> By the New England settlers and their descendants they were regarded with dislike.<sup>2</sup>

With a population thus constituted the peculiar confused and turbulent character of the earlier history of East Jersey is not at all astonishing. The very nature of the case produced a proprietary following stronger in influence than numbers. The New England element, opposed to everything for which the proprietors stood, were hostile, sometimes passively but often actively. Between stood the Dutch, neutral usually, because they had little share in the feelings which lay at the bottom of all the conflicts.

When East Jersey passed into the hands of the twenty-four proprietors it had a population of over 5,000, of whom two-thirds lived in the towns.<sup>3</sup> But no later figures are available until the establishment of royal rule. Besides Bergen, the province contained the towns of Elizabethtown, Newark, Woodbridge, Piscataway, Middletown and Shrewsbury. The twenty-four had with much effect established Perth Amboy as their capital, but it did not possess the New England town government.

The population of West Jersey, as compared with that of the sister province, was homogeneous. Aside from the settlement of a few Swedish families on Racoon Creek<sup>4</sup> no permanent European establishment existed before the province passed into the hands of the Friends, and a large share of those who settled in West Jersey under the Quaker rule were of the English middle class, substantial artisans, trades-

<sup>1</sup> *New Jersey Archives* (first series), vol. v, p. 11.

<sup>2</sup> *Ibid.*, vol. iii, p. 14.

men and small farmers, the class which the Friends themselves represented. The earliest settlers were in close sympathy with the proprietors at home, and a large number held proprietary interests themselves. Under these circumstances such a clashing of parties as came about in East Jersey was impossible. Still there were not lacking on the Delaware some elements of difference among the colonists. Though the first arrivals at both Salem and Burlington were mainly Quakers, the later comers were by no means all members of or even sympathizers with the Society. There is, of course, no way to estimate accurately the relative number of those who were non-Quakers, but it seems certain that before the establishment of royal rule they outnumbered the Friends.<sup>1</sup> There was thus the possibility of development of parties on religious or semi-religious lines, a possibility of which the opponents of the proprietors did not fail to take advantage.

As the settlers on the Delaware came, *from* in the main, direct ~~from~~ England, no such town system as was developed in East Jersey appeared at first. Salem and Burlington, the latter the especial stronghold of the Quaker interest, remained for a long time the only considerable settlements. At about the time of the establishment of royal rule the population of West Jersey was estimated at 3,500, perhaps one-third that of East Jersey. But West Jersey was strong in material prosperity and in the absence of that contentious spirit contributed by New England to the neighboring province.

<sup>1</sup> *New Jersey Archives*, vol. ii, p. 305. Daniel Leeds was, however, a determined foe of the Quakers.

## CHAPTER III

### THE LAND SYSTEM OF EAST JERSEY

HAVING examined hurriedly the character of the proprietors and of the proprietorship so far as it was a form of land ownership and having noted the nature of the population which settled in East Jersey we must next consider more closely the manner in which the land of the province actually passed from the hands of the lords of the soil into those of the colonists. This study will afford much insight into the relations existing between them. In this chapter, however, we shall confine our attention to the proprietary land system in its actual workings. The interesting and important attempts to overthrow it, especially in the case of the bitter Elizabethtown controversy, must receive separate consideration.

The original Dutch settlers, at least, received liberal treatment at the hands of Berkeley and Carteret. The articles of surrender of New Netherland expressly promised that all lands held within the limits of the province should be confirmed to their owners,<sup>1</sup> and this promise Berkeley and Carteret faithfully fulfilled in the case of all lands actually taken up and occupied. The only conditions required were the highly reasonable ones that the owners should take the oath of allegiance to the King and of fidelity to the lords proprietors and fulfill the requirements laid down for the patenting of their lands.<sup>2</sup>



In September, 1665 Governor Philip Carteret and council granted to the town and freeholders of Bergen township bounds including about 11,520 acres, express reservation, however, being made of quit rent.<sup>1</sup> The bounds began at a place called Mordams Meadow, lying on the west side of the Hudson; from thence they extended in a northwest "lyne" by a "three rail fence" to a place called Espartin and from thence to a little creek running into the Hackensack River. The Hackensack was then the limit "till it comes to the point or neck of land that is over against Staten Island or Shooters Island in Arthur Cull Bay." The bound was then the Kill van Kull to Constable's Hook, and thence the "lyne" was the Hudson to the starting-place.

Although the Proprietors formally confirmed grants for numerous inhabitants of Bergen<sup>2</sup> they never gave to an individual an original patent for lands in the township.<sup>3</sup> The exact amount of land already appropriated is not known, but it is estimated at 3,500 acres.<sup>4</sup> The grants made to the original founders of Bergen by the West India Company were certainly small, nearly all being 25 or 50 morgen. A morgen was about equal to two acres.<sup>5</sup> The unappropriated lands amounting to about 8,000 acres, in spite of numerous disputes and difficulties regarding them and several efforts to apportion them, continued to be held by the freeholders of Bergen in common until 1763.<sup>6</sup>

But in the apportionment of land to the settlers who came after the establishment of English control lay the real

<sup>1</sup> Winfield, *History of the Land Titles of Hudson County* (New York, 1872), vol. i, pp. 14-15.

<sup>2</sup> These confirmations are found chiefly in liber i, *East Jersey Records*.

test of the wisdom of the proprietors. On February 10, 1664, Berkeley and Carteret issued "the Concessions and Agreements of the Lords Proprietors of New Jersey to and with all and every the adventurers and all such as shall settle and plant there."<sup>1</sup> The Concessions were intended to provide a suitable form of government for the new colony, to encourage settlers by a guarantee of liberties, and to regulate the distribution of land. In all these matters they were fair and liberal to as great a degree as could reasonably be expected in a proprietary province.

The Concessions declared that all persons already in New Jersey or who should transport themselves thither before January 1, 1665-6, and who should meet the governor upon his arrival and who should be provided with "a good musket boare twelve bullets to the pound with ten pounds of powder and twenty pounds of bullets, with bandeleers and match convenient, and with six months provisions for his own person," should receive 150 acres of land, English measure. For every able-bodied servant similarly equipped that such person should bring with him into the province, he was to receive the same amount. For every able-bodied servant properly armed sent into New Jersey, even if the master himself did not remove, 150 acres were likewise offered. For every weaker servant or slave, male or female over fourteen years, 75 acres were given, and every Christian servant was to receive 75 acres upon the expiration of his term of service.

Every master or mistress who should remove to New Jersey before January 1, 1665-6 was to receive 120 acres of land and the same amount for every able-bodied servant properly provided. For each weaker servant the premium was 60 acres with the same amount for each Christian

<sup>1</sup> *New Jersey Archives* (first series), vol. i, p. 28.

servant at the end of his time. For the second year, down to January 1, 1666-7, the offer was 90 acres for masters and able-bodied servants; 45 acres were to be given for weaker servants and as a servant's reward. For the third year, down to January 1667-8, the corresponding amounts were 60 acres and 30 acres. But all such lands were to be held subject to the condition that for the ensuing 13 years one able-bodied servant or two weaker ones were to be maintained upon every 100 acres. Upon failure in this regard, after a space of three years after notification had been given, the lords proprietors were to have the power of disposing of the lands to other parties unless the assembly of the colony should judge that, owing to poverty or other cause, the fulfillment of the conditions was impossible.

The governor and council (and assembly if any be) were to see that all the land should be divided into "general lots," none less than 2100 acres nor more than 21,000, excepting "cities," towns, etc., and the "near lotts of townships," and these were to be divided into seven parts, one of which was to be reserved for the lords proprietors.

The method by which the land was to be taken up was minutely regulated as follows: the governor was to give to each person to whom land was due a warrant signed and sealed by himself and the major part of his council and directed to the surveyor general or his deputy to lay out, limit or bound the required number of acres. After the register of the Province had recorded the warrant and attested the record upon the warrant, the surveyor general was to certify to the chief secretary or register the name of the person for whom he had laid out the land, by virtue of what authority, the date of the warrant, the number of acres and their bounds. This certificate was likewise to be entered in a book by the register which was to have an alphabetical table so that the certificates could be more easily

found. The certificates having been duly entered, the governor and the major part of the council were to sign a second warrant directing the register to prepare a grant of land to the proper person. A form was then specified in the Concessions according to which all patents must run. The form distinctly stated that the land granted was to be held in free and common socage, but subject to a yearly quit-rent of one-half penny per acre to the lords proprietors. Said quit-rent, however, was not to begin until March 25, 1670. All grants were to be sealed by the governor with the seal of the province and to be subscribed by him and the council. They were then once more to be recorded by the register in a book of records and were thereafter to be effectual in law. According to this method all conveyances from the proprietors would be recorded three times in the stages usually referred to as "warrants for surveys," "surveys," and "patents."

The Concessions further stated that in towns and villages convenient lands were to be granted for forts, churches, streets, etc., and each parish was to have 200 acres for the support of the minister. All such lands were to be free from taxation. But all cities and towns were like other tracts to be divided into seven parts, one of which was to be for the lords proprietors. Free passage to the sea through all rivers, creeks, etc. was guaranteed to all settlers, and it was declared that the representatives of the freeholders should at all times be free to make any petition for redress of grievances to the lords proprietors either with or without the consent of the governor and council.

Such were the leading provisions of the Concessions grouped together as relating exclusively to land. But in the other parts of the document there were also several important paragraphs regarding the land system. The offices of chief secretary or register and of surveyor general

were provided for. Their incumbents were to be appointed by the lords proprietors, but might be suspended by the governor and a majority of the council.<sup>1</sup> In the clauses relating to the assembly it was set down that that body had power to prescribe the quantities of land which should be from time to time allotted to every head, free or servant, male or female and to ordain rules for the casting of lots for land and the laying out of the same, provided that they did not exceed the proportions set down by the Concessions.<sup>2</sup> Under the duties of the governor and council it was also stated that, for the better security of the proprietors and all the inhabitants, they were to take care that all land quietly held and possessed for seven years after its first survey by the surveyor general or his order should not be subject to any review, resurvey, or alteration of bounds.<sup>3</sup>

As the Concessions were the basis of the land system of East Jersey this statement of their leading provisions is necessary. It is to be admitted, however, that they present little that is peculiar. Upon the whole they are a credit to the liberality and common sense of Carteret and his associate, nor could they be fairly expected to foresee the difficulties to which they were to give rise. The proprietors at once took steps to put them into operation by commissioning Philip Carteret as governor,<sup>4</sup> and Robert Vauquelin as surveyor general.<sup>5</sup> James Bollen was appointed register by the governor.<sup>6</sup>

But the circumstances of the settlement of East Jersey rendered it practically impossible to carry out the Concessions, during the first decade at any rate, in the spirit in

<sup>1</sup> *New Jersey Archives* (first series), vol. i, pp. 28-29.

which they had been intended. The New Englanders who came to occupy the lands had been accustomed to different methods. They settled not individually, but by companies of associates. Having obtained the legal right to purchase their lands of the Indians they wished to apportion what they had obtained in their own way.<sup>1</sup> Moreover, any proprietary system with its semi-feudal associations was to them not only unfamiliar, but repugnant. The payment of quit-rents especially was certain to be a burden to which they would not cheerfully submit.

When Governor Carteret arrived in the province the Monmouth purchase, sanctioned by Nicolls, was already occupied. At least four families were at Elizabethtown,<sup>2</sup> but Carteret by the purchase of John Bailey's interest became himself a member of the associates.<sup>3</sup> The settlements of Woodbridge, Piscataway, and Newark were all made on Carteret's invitation and by his consent.<sup>4</sup> But in spite of the fact that the men of Elizabethtown and Woodbridge at any rate readily took the oath of fidelity to Berkeley and Carteret,<sup>5</sup> the requirements of the Concessions regarding the laying out and patenting of lands were not complied with in any of the towns. Apparently Governor Carteret did not press this at first, being willing no doubt to let the matter rest until the first struggles with the wilderness were past.

<sup>1</sup>The New England method is clearly stated by Daniel Denton, *A Brief Description of New York, formerly called New Netherlands* (reprint, New York, 1845), p. 17.

The settlers of Elizabethtown were originally divided into three classes, known as first lot men, second lot men, and third lot men. In all divisions of land after that of the home lots it was understood that a second lot man was to have twice and a third lot man three times as much as a first lot man.<sup>1</sup> It is believed by Hatfield that the first surveys were made previous to the arrival of Carteret and Vauquillin, "possibly by Wolphertsen, who had been the city surveyor of New Amsterdam," and that the shares were assigned by lot as in the case of Newark.<sup>2</sup> Nevertheless in December, 1667, Carteret, acting apparently upon a petition of some of the inhabitants, commissioned John Brackett<sup>3</sup> in the absence of the surveyor general to lay out for each man his house lot which was to consist of four acres and a pittle, or addition to it, of about twenty acres. The Elizabethtown Bill in Chancery asserts that the first apportionment of land was agreed upon with the consent of Governor Carteret, and consisted of amounts of 6, 12, and 18 acres to the holders of the respective rights. Shortly afterward there was a second division of 12, 24, and 36 acres.<sup>4</sup> But the historian of Elizabethtown maintains that the work of Brackett must have consisted only in rectifying the errors of the earlier surveys and in laying off the shares of newcomers.<sup>5</sup> Positive evidence does not sustain the suppositions of Mr. Hatfield, but it is at any rate clear that, though the lands were laid off before 1670, no patents were taken out by any persons of Elizabethtown previous to that date.

When the sale of half the Elizabethtown tract was made

<sup>1</sup> Answer to the *Elizabethtown Bill in Chancery*. v. 22.

by Carteret, Ogden, and Watson to Daniel Pierce and his associates for the settlement of the two new townships of Woodbridge and Piscataway, the first article of the contract gave permission to the newcomers to lay out their lands according to their own judgment, but not exceeding the proportions laid down in the Concessions. The fifth article, however, not only required the payment of the quit-rent, but also stated that all lands should be patented and surveyed by the surveyor general.<sup>1</sup> In December, 1667, Daniel Pierce himself was commissioned as deputy surveyor for the Woodbridge district. The apportionment of the land made by him at this time, however, was not complete, a large part of the tract, as in Elizabethtown, being left for later division.<sup>2</sup> But in spite of the part taken by Governor Carteret in arranging the settlement of Woodbridge, no patents appear to have been taken out in either that town or Piscataway previous to 1670.

As for the settlers of the Monmouth Patent, and of Newark, they recognized in no way the control of the proprietors over the land within their bounds. In Newark the lands were apportioned by lot in town meeting in true New England style.<sup>3</sup> The same method was followed in Middletown,<sup>4</sup> and there was no pretense of patenting land under the Concessions.

The year 1670 is an important point in the development of the land system of East Jersey, because the effort to collect quit-rent began at that time, and thus forced upon the attention of the settlers the requirements of the Con-



cessions. Berkeley and Carteret must have supposed that the postponement of quit-rent for the first seven years would be a liberal encouragement to the pioneers of the colony. But the result was unfortunate, for when the rent came due it seemed to many of the settlers like a new and burdensome exaction. With the details of the struggle which ensued between the proprietors and a considerable part of the inhabitants over the payment of rent and the patenting of land we need not here concern ourselves. Suffice it to say that the proprietors were at length victorious although their triumph was postponed by the Dutch reconquest of 1673-4.

As a step in the enforcement of their rights, however, Berkeley and Carteret issued a document known as "a Declaration of the True Intent and Meaning of the Concessions," which really modified some of their provisions respecting land. No person was henceforth to be counted a freeholder or to have any vote in any election or to be eligible for any office in the colony who did not hold his lands by patent from the lords proprietors. It was specifically declared that the governor and council had the right to "dispose of the Allotment of Land" without the general assembly, which of course was always likely to be under anti-proprietary control. The regular laying out of lands and the apportionment of house-lots was to be left to the first "undertakers" upon agreement with the governor and council. The consent of the assembly was not needed. This provision was, of course, a recognition of the method of settlement by companies of associates.<sup>1</sup> But in this case as all others the lands were to be actually laid out by the

tary alone, even if the council or any portion of them were not present. These changes appear at first glance to be in matters of detail only, but they effectually checked the ability of the disaffected element to thwart the proprietors' agents.

Immediately after the restoration of proprietary authority, December 11, 1674, the governor and council issued a proclamation ordering the surveyor general or his substitute to remain at Newark for the surveying and patenting of land. He was also to attend on certain days at Elizabethtown, Piscataway and the Nevesinks for the same purpose.<sup>1</sup>

The regular patenting of lands in the disaffected towns thus began, and the East Jersey Records give, from this point on, invaluable information regarding the distribution of lands in the colony. The greater part of the grants of this period naturally lay within the township limits, and few of them were extensive.

The Woodbridge patents are, speaking in a general way, the earliest, as the people of this town had taken little share in opposing the proprietors. Most of the original settlers took out patents even as early as 1670. Of sixty-two recorded patents for this and the few following years, forty-four range somewhere from ninety to one hundred and seventy acres. Two are for smaller amounts, while the largest, excepting the lands reserved for the proprietors, is five hundred and twelve acres, the portion of John Smith, "milwright," one of the original purchasers. The nine original purchasers were each allowed two hundred and forty acres of upland and forty of meadow in addition to the regular allotment. Only four grants to other persons ex-

sixty, and twenty acres respectively, the first of these being in 1687 and the last in 1706.<sup>1</sup>

In Piscataway the result was similar. Of the sixty patents granted before 1690, only six exceeded three hundred acres, while most of them range between one and two hundred.<sup>2</sup> Of the ninety-nine surveys recorded for lands in Newark previous to 1700, nearly all are in the neighborhood of one hundred acres, the largest being for only two hundred and eighty.<sup>3</sup> A peculiar interest naturally attaches to the allotments in Elizabethtown. But they do not differ essentially in character from the others. The eighty-four warrants for surveys from 1675 to 1678 are, in the main, for amounts of approximately sixty, one hundred, one hundred and twenty, and one hundred and eighty acres. Seven are for amounts of between two and three hundred, eight between three and four hundred, and three between four and five hundred. The largest warrant is for 2,700 acres for Sir George and Philip Carteret, and their eighteen servants. Capt. John Baker with his wife and eight others received 1200. The largest grants were due either to the purchase of interests or to the importation of servants.<sup>4</sup>

The division of lands in the Monmouth Grant had some points of peculiarity. The opposition to the proprietors by the people of Middletown and Shrewsbury had been especially determined. But eventually an agreement had been arrived at between them and Governor Carteret by which, in return for their recognition of the proprietary authority, their right to dispose of the lands within the Nicolls

<sup>1</sup> Whitehead, *Contributions to the Early History of Perth Amboy*, pp. 355-8; *Elizabethtown Bill in Chancery*; appendix, schedule vii.

<sup>2</sup> Whitehead, *op. cit.*, pp. 400-3; *Elizabethtown Bill in Chancery*; appendix, schedule v.

<sup>3</sup> *Elizabethtown Bill in Chancery*; appendix, schedule iv.

<sup>4</sup> Hatfield, *History of Elizabeth*, pp. 182-184.

grant was confirmed.<sup>1</sup> It is not surprising therefore that the allotments were somewhat larger than elsewhere. Of thirty-two patents issued to inhabitants of Middletown in 1676 and 1677, the majority are for over two hundred acres. Seven are over four hundred and fifty acres. Richard Hartshorne received seven hundred and fifty, Peter Tilton five hundred and seventy, James Grover ten hundred and seventy-seven, Jonathan Holmes seven hundred and sixty-one, and Richard Gibbons five hundred.<sup>2</sup>

The provisions of the Concessions appear to have been carried out without serious modifications or omissions until the province passed out of the hands of Carteret and his heirs in 1682. One interesting feature of their operation was the granting of "headlands" to settlers for the importation of relatives and servants. Under date of 1675, appears in the East Jersey Records the statement: "Here begins the Rights of Land due according to the Concessions," and this is followed by a statement of claims entered for lands.<sup>3</sup> Those recognized as allowed foot up in all to over 12,000 acres. It is noticeable, however, that most of the persons imported were members of the families of settlers,—wives, sons, and daughters. The total number of white servants would hardly reach fifty, but the number of negroes is larger, thirty-two being brought by Capt. John Berry.<sup>4</sup> Some of the lands thus granted were laid off within the limits of the townships, notably in Elizabethtown.<sup>5</sup>

But during the régime of Carteret there were several

<sup>1</sup> *New Jersey Archives* (first series), vol. i, p. 88.

<sup>2</sup> *East Jersey Records*, liber i. A complete summary of early surveys in the Monmouth Patent is given in Salter's *History of Monmouth and Ocean Counties*, pp. 29-32.

<sup>3</sup> *East Jersey Records*, liber iii, p. 1 (reversed side).

<sup>4</sup> *Ibid.*, liber iii, p. 1 (reversed side).

<sup>5</sup> *Elizabethtown Bill in Chancery*, p. 44.

grants of another character, extensive transfers of land outside of the towns. The most interesting of these is that of 3,840 acres at Shrewsbury to Col. Lewis Morris of Barbadoes and his associates in establishing iron-works there. This grant was to be known as Tinton Manor.<sup>1</sup> In 1668 all the meadow and upland between the Hackensack and the Passaic, south of a line drawn seven miles north from their intersection, was granted to Captain William Sanford. By a special arrangement he paid twenty pounds sterling per annum instead of the usual quit-rent.<sup>2</sup> Nathaniel Kingsland, also a West Indian, later became interested in this grant.<sup>3</sup> In 1669 Capt. John Berry and his associates obtained a tract adjoining Sanford's, extending north "six miles into the Country."<sup>4</sup> The name New Barbadoes was applied to this locality, now Rutherford and vicinity.<sup>5</sup> A little later William Pinhorne acquired by purchase of Edward Earle, Jr. a plantation of over one thousand acres at Snake Hill.<sup>6</sup> In April, 1682, Lawrence Andriesse of Bergen obtained a patent for 1076 acres at Hackensack,<sup>7</sup> and a few days later Philip Carteret, Mathias Nicols, Jacob Courtillou and other associates received another for a tract lying along Passaic River, known as Aqueyquinonke, containing 5320 acres.<sup>8</sup> There were also other large grants. We may infer that most of the persons concerned in these intended to sell off their estates in smaller quantities later. But Berry

<sup>1</sup> *East Jersey Records*, liber i, p. 155.

<sup>2</sup> *Ibid.*, p. 33; Whitehead, *East Jersey under the Proprietors*, p. 54.

<sup>3</sup> *East Jersey Records*, liber i, p. 130.

<sup>4</sup> Whitehead, *East Jersey under the Proprietors*, p. 55; *East Jersey Records*, liber i, p. 46.

<sup>5</sup> Mellick, *Story of an Old Farm* (Somerville, 1889), p. 118; White-

and Pinhorne at any rate maintained extensive plantations with negro slaves.<sup>1</sup>

Speaking in general, however, we may safely say that during the Carteret period the soil of East Jersey was being taken up in comparatively small allotments by bona-fide settlers. Anything like a system of large estates was unknown, nor was land speculation being carried on to any great extent, except of course by the lords proprietors themselves. The purchase of East Jersey by the twenty-four proprietors marks, however, an important change in the development of the land system. This change was not so much in the mechanical features as in the spirit and objects with which it was carried out and the results produced.

The provisions of the Concessions relating to land were with some modifications continued by the Twenty-four.<sup>2</sup> In their "Brief Account," issued immediately after the purchase, however, they offered new inducements to settlers. All persons who would transport themselves and their families into the province by December 25, 1684, were to receive twenty-five acres for each head, such land to be taken up in one of the townships already settled and laid out. If any desired more land they might purchase up to the limit of one hundred acres. The charge of quit-rent which had already caused such trouble was continued. The new proprietors were, however, wise enough to provide that "whosoever is willing to buy off his yearly rent and become a freeholder may do so, paying after the rate of twelve years purchase, which comes to fifty shilling for a lot of twenty-five acres and so paying for the same rate for a greater or less

was later continued till January 13, 1685-6, but was then discontinued.<sup>1</sup>

One of the first plans of the new proprietors was the laying out of a capital town or city. For this purpose they selected Ambo Point, which had hitherto been kept unoccupied as being the one-seventh of the Elizabethtown tract reserved for the proprietors. One thousand five hundred acres were to be divided into one hundred and fifty equal lots, of which one hundred were to be sold and fifty reserved for such of the proprietors as should reside in the province. The lots were to be sold for fifteen pounds up to December 25, 1682, and for twenty pounds to Christmas, 1683. The proprietors further declared their intention each to build and maintain a house in the new city, and extra inducements were offered to carpenters, masons, and laborers of all sorts to persuade them to remove there.<sup>2</sup> The town was actually laid out according to the foregoing plan by Samuel Groome, the new surveyor general, though later it was rearranged by Governor Gawen Lawrie.<sup>3</sup>

But the main interest of the new owners was, of course, the subdivision of the unoccupied lands of the province. Whatever their other motives, the business side of their venture was never lost sight of. It was therefore determined that, as a first dividend of the province, 10,000 acres should be "set out" for each of the twenty-four proprietors. For this purpose convenient tracts were ordered to be surveyed, and these were to be divided into either three or two parts, as might be more convenient, one part being for eight or

<sup>1</sup> *Elizabethtown Bill in Chancery*, p. 16.

<sup>2</sup> Smith et al. v. the Proprietors of the New Town of Ambo Point.

twelve proprietors as the case might be. The parts were then to be subdivided.<sup>1</sup> Later, upon the demand of the Scotch proprietors, it was ordered that the lands should always be divided into two parts, of which one was to be for the Scots and those adventuring with them.<sup>2</sup> Those who had purchased the fractions of interests were, of course, to receive proportional amounts of land from the first dividend, that is, five hundred acres were to go to the holder of one-twentieth, etc.<sup>3</sup>

In spite of the continuance of the Concessions of Berkeley and Carteret, certain changes did come with the advent of the Twenty-four in the method of granting lands. This was caused by the institution in 1684 of the council of proprietors.<sup>4</sup> In the previous year the proprietors had issued a new constitution for East Jersey, known as the "Fundamental Constitutions" designed to replace the Concessions as the basis for the government of the colony, but owing to the indifference of the settlers this elaborate plan never went into effect. It provided in one of its clauses for a body known as "a common council" to consist of the twenty-four proprietors or their proxies, and twelve especially elected freemen, to whom certain important functions were to be given. To have a seat in the council a proprietor must, however, retain a fourth part of his propriety, and if through sub-division no person held such proportion then those holding smaller interests were to choose one to represent them.<sup>5</sup>

Now although the Fundamental Constitutions became a dead letter, the proprietors by special instruction to Gawen



Lawrie, their governor, under date of August 1, 1684, ordered the establishment of the council, naming proxies who were themselves in most cases persons holding proprietary interests resident in the province. The idea of having members representing the freemen was of course dropped.<sup>1</sup> To this council of proprietors was intrusted all such matters relative to the proprietary interest as needed settlement upon the soil of the province. Naturally these had to do especially with the land system, with such things as the disposing of the lots in Perth Amboy, the purchasing of land from the Indians, the renting of lands to settlers, etc.<sup>2</sup> But the most important function of the council was the examination of the right of all claimants to land-titles, and at least five proprietors must sign an order to the governor before he was to issue his warrant to the surveyor general for the further laying off of the land. This method began November 13, 1684.<sup>3</sup>

With this modification the manner of granting lands remained as before. The warrants and returns of surveys were still recorded by the proprietary register, and patents issued in about the old form till 1703. In the case of lands set out for proprietors no quit-rent was required.

From the beginning many difficulties beset the Twenty-four, not the least of which was that of finding competent and honorable officers and agents. They began by naming the respected Robert Barclay governor of the province, but it was never intended that the distinguished author should rule the province in person. Thomas Rudyard, one of the proprietors and a well-known London lawyer, was therefore commissioned as deputy governor.<sup>4</sup> But he quarreled with

<sup>1</sup> *New Jersey Archives* vol. i. p. 150.

<sup>2</sup> *Ibid.* vol. i. p. 167.

the surveyor general and moreover was guilty of taking advantage of his position to secure especially desirable land. He was therefore superseded by the Quaker Gawen Lawrie, in September, 1683.<sup>1</sup> Lawrie proved even more remiss, disobeying the orders of the proprietors in several respects and also proving too shrewd in his own interest.<sup>2</sup> The proprietors then made the mistake of naming Lord Neil Campbell, brother of the Duke of Argyle who had just rebelled and lost his life.<sup>3</sup> Campbell had little interest in New Jersey and remained only until it was safe for him to return to Scotland.<sup>4</sup> At length, December 10, 1686, upon the withdrawal of Campbell the control passed into the hands of an efficient and able man, the Scot, Andrew Hamilton.<sup>5</sup> But when, in 1697, it was found necessary because of certain technicalities to supersede him, an untrustworthy adventurer, Jeremiah Basse, was commissioned.<sup>6</sup>

In their choice of other officers the proprietors were somewhat more fortunate. Their first selection as surveyor general was Samuel Groome, a proprietor who served efficiently, but who was practically superseded under Governor Rudyard by Philip Wells.<sup>7</sup> Groome died soon after, and the surveyor-generalship was then held for a short time by William Haige.<sup>8</sup> But in August, 1684, the celebrated George Keith was commissioned. His tenure is notable because of his work in running the dividing line between East and West Jersey.<sup>9</sup> Upon Keith's withdrawal

<sup>1</sup> *New Jersey Archives*, vol. i, p. 423.      <sup>2</sup> *Ibid.*, vol. i, pp. 492, 531.

<sup>3</sup> Whitehead, *East Jersey under the Proprietors*, pp. 153-4.

<sup>4</sup> *Ibid.*, pp. 152-7, 226.

<sup>5</sup> *Ibid.*, p. 157.

<sup>6</sup> *Ibid.*, pp. 195, 229; *New Jersey Archives*, vol. ii, p. 91 (note).

to Pennsylvania, John Barclay was appointed, April, 1692,<sup>1</sup> with John Reid as deputy and substitute. Reid eventually succeeded to the office in 1702.<sup>2</sup>

The receiver-generalship was usually connected with the office of surveyor general. Both Groome<sup>3</sup> and Haige, were commissioned as receivers general. Keith, however, does not seem to have acted as treasurer. Instead, upon the death of Haige, the proprietors, July, 1688, named William Dockwra.<sup>4</sup> As Dockwra did not remove to the province, he authorized Governor Hamilton to collect quit-rents and receive other payments until he could fix upon a suitable deputy. Eventually, in 1692, he named John Barclay, thus again connecting the offices of surveyor and receiver general.<sup>5</sup> Two years later, however, James Dundas was commissioned by Governor Hamilton.<sup>6</sup> Although George Willocks, as will be shown later, was appointed in 1697 as special agent for the sale of the proprietors' quit-rents, and for the collection of arrears, no commission filling the place of Dundas, who died in 1698, appears until the establishment of royal government.

In the important office of secretary or register there were fewer changes. When Rudyard came out as governor he bore also a commission as secretary,<sup>7</sup> and although removed from the governorship, he continued as secretary down to 1685, when he left East Jersey for Barbadoes.<sup>8</sup> He was

<sup>1</sup> Whitehead, *op. cit.*, p. 42; *New Jersey Archives*, vol. ii, p. 81.

<sup>2</sup> Whitehead, *op. cit.*, p. 45.

<sup>3</sup> *New Jersey Archives*, vol. i, p. 378.

<sup>4</sup> Whitehead, *Contributions to the Early History of Perth Amboy*, p. 15.

<sup>5</sup> *Ibid.* p. 42.

<sup>6</sup> *Ibid.* p. 271.

succeeded by James Emott of Elizabethtown, a terror to all students, because of his peculiar script.<sup>1</sup> In 1689 the energetic Dockwra was commissioned by the proprietors as secretary and register, and Thomas Gordon was named by him as deputy. During Gordon's absence in England on a mission for the proprietors, John Barclay held the office. But in 1702, Thomas Gordon was again commissioned both as secretary of the province and register of the proprietors.<sup>2</sup>

It is very noticeable that, especially toward the end of the period, the majority of those holding office were Scotchmen, and one can readily appreciate why there should be feeling against the clique whose most prominent members were Gordon, Barclay, and Willocks.

The taking up of land on a large scale by the proprietors and their assigns soon gave a very different aspect to the province. Thousands of acres of the most desirable lands, lying especially along the Bay, the Kills, the Hudson, and the lower courses of the rivers of the province, had already been possessed. The new proprietors were, therefore, in the main, forced to content themselves with lands lying further back. But as was usual in such cases their surveys followed chiefly the valleys of the principal streams,—the Passaic, the Hackensack, the Shrewsbury, and the Raritan. The valley of the latter river, especially reaching back into what is now Somerset County, was rapidly taken up.<sup>3</sup> The new owners and their assigns, however, also eagerly acquired the unoccupied parts of the existing townships. The

especially desirable, and the surveys lying within its original bounds are numerous.<sup>1</sup>

But the most significant thing about the new régime is the size, comparatively speaking, of the allotments now made. It is true that not many of the original Twenty-four contemplated retaining and planting independently their undivided shares. From the beginning a subdivision of their estates was planned. The Scotch proprietors "and those adventuring with them" were most active in endeavoring to occupy and plant their own portions. The majority of the servants dispatched to East Jersey appear to have been sent by the Scotch proprietors,<sup>2</sup> while several vessels with cargoes valued at many hundreds of pounds also left Scotch ports for Perth Amboy.<sup>3</sup> In their instructions of 1684, to Governor Lawrie, he was required neither to sell or to rent the lands laid out for the Scots at the rates agreed upon by the other proprietors, as they had "a prospect of turning it to a better account."<sup>4</sup> On the other hand it appears, however, that the Scots were particularly active in selling subdivisions of their shares.<sup>5</sup> Of the other proprietors some at least neglected to occupy and improve their dividends, thus giving rise to deserved complaints that they were retarding the development of the province.

The accommodating of "small purchasers" received much attention from the proprietors, and was the subject of lengthy instructions to their officers in East Jersey. In 1684 it was agreed that small purchasers should at once receive their shares of land out of the dividends of the proprietors from whom they had bought, and that if any share

<sup>1</sup> *Elizabethtown Bill in Chancery*, appendix, schedule iii.

did not amount to five hundred acres, it should nevertheless be made up to that amount if the purchaser so desired. If a proprietor had sold so many shares his entire dividend of the 10,000 acres was to be taken, if necessary, to accommodate each with the required five hundred acres, provided that he had not sent servants or done anything to improve his land. And if still more was required, it might be taken from the unimproved land of some other proprietor. Care, however, was to be taken to reprise the proprietors whose land was taken, out of the next dividend of the 10,000 acres, and the small purchaser was to have no more land in the later dividends than his own share came to unless he had already improved his first five hundred acres.<sup>1</sup>

In 1685, after the proprietors at length understood the mismanagement of Rudyard and Lawrie, they issued a further order regarding the laying-out of the lands which was even more specific. It was now set down that each owner of a propriety or half a propriety should have 1000 acres set out to him on the first dividend, and should settle at least a family with three working hands thereon. Each person having a less share should have five hundred acres on the same condition. Thus lands were to be set out until the entire 10,000 acres agreed upon had been filled. Then further allotment was to stop on that propriety for three years until the other proprietors had a chance "to come up to the like quantity." But after a space of three years those concerned in said propriety might take up another 10,000 acres, provided that they settled just double the number of persons on the second division as on the first. All lands

must retain at least a sufficient share of his interest to qualify him as a proprietor according to the Fundamental Constitutions.<sup>1</sup>

But in spite of the subdivision of interests, the tracts of land surveyed and taken up under the Twenty-four greatly exceeded in size those patented under Berkeley and Carteret, when patents of even five hundred acres were rather rare. For example, within the disputed Elizabethtown tract we find that thirty-eight surveys are recorded from 1683 to 1703 for tracts of five hundred acres or over. Of these no less than twenty-three exceeded one thousand acres. Eight surveys were over two thousand. William Dockwra had five thousand acres along the Passaic; Campbell and Blackwood obtained 3,900; Peter Sonmans, 2,800, while the Peapack Tract acquired by George Willocks and Dr. John Johnstone covered 3,150.<sup>2</sup> Owing to the existence of the Elizabethtown Bill in Chancery and other materials relating to the Elizabethtown dispute, the exact figures for this district are readily obtainable. The East Jersey Records, however, show that not only for the valley of the Raritan, but for the whole of the province, a period of comparatively large surveys begins in 1683.<sup>3</sup> Most of the holders of extensive tracts were of course themselves proprietors, holders of at least fractions of interests. But patents for extensive tracts to outside investors are not infrequent.<sup>4</sup> A few rather large grants for headland are also to be found, while in certain cases the proprietors granted tracts of land as special rewards for services rendered. A gift of one thousand acres to Dockwra is the

<sup>1</sup> *New Jersey Archives* vol. i. p. 404

best example.<sup>1</sup> Patents for smaller tracts still appear, but many of these lie within the bounds of the original townships.

These developments brought with them important consequences. Henceforth the landholdings of East Jersey could be classed into two general groups: the small holding of the original settlers, lying chiefly within the towns and subject always to quit-rent, and the large tracts of the proprietors which, of course, were free from such payment. There was, of course, a continual tendency toward the subdivision of the latter, and purchasers from individual proprietors seem to have been subject to quit-rent to the proprietors from whom they purchased. But this process of subdivision was gradual. If we bear in mind the peculiar division of the lands of the province and recall the origin of the people into whose hands they came, several important developments in the history of East Jersey will become much more clear than would otherwise be possible.

While adhering strictly to their right to quit-rent under the Concessions,<sup>2</sup> the Twenty-four seem to have made some effort to conciliate the inhabitants of their province, many of whom were implacably hostile to the Carterets.<sup>3</sup> In this effort they naturally failed as long as they were unwilling to remove the real bone of contention, the quit-rent. The proprietors themselves at length realized that though they might obtain temporary quiet by allowing the rents to run in arrears, no permanent settlement would be possible while the rents remained. They therefore in 1697 commissioned George Willocks as their agent to collect ar-



he was not to sell any rents under the price of "Twenty years Purchase of the full Yearly Value of those Rents;" and he was not to execute any release of rents until he had made contracts for at least one hundred and thirty-three pounds sterling value of the said rents.<sup>1</sup> The mission of Willocks was a step in the right direction, yet it was productive of little good. The concession had been too long delayed, and under the encouragement of Basse, the proprietors' renegade governor, a direct attack upon the proprietary system was already being made. The terms offered by Willocks seem to have received little consideration on the part of the disgruntled element in the province and his presence as proprietary agent only made the conflict more bitter.<sup>2</sup>

Before considering the developments which led to the "Revolution," as the temporary overthrow of the proprietary system was often called in East Jersey, we must pause for a moment to note one or two other features regarding the land operations of the proprietors. It is an interesting fact that until the accession of Basse the general assembly had made no serious effort to interfere with the land system. In 1682 it had enacted that all patents in the name of the lords proprietors and signed by the governor and the greater part of the council should be valid even though the names of the proprietors were not all certified particularly.<sup>3</sup> In 1686 an act regulating fees gave the surveyor general two shillings six pence for a survey of thirty acres; five shillings for surveys up to fifty acres; six shillings from fifty to one hundred acres; six shillings a hundred acres up to five hundred; two shillings for each one hundred from five hundred to one

<sup>1</sup> *New Jersey Archives*, vol. ii, p. 186.

thousand acres, and for each one thousand acres in the same tract, twenty shillings, and for odd measure in proportion. He was to have two shillings for the return of each survey and twelve for a copy out of the surveyor's record.<sup>1</sup> A later act of 1692 declared valid all conveyances of land made by attorneys of proprietors.<sup>2</sup> All of these laws were readily approved.

Even after the anti-proprietary movement had begun, it took the form rather of an attack against the entire proprietary authority than an effort to control the existing machinery of government. In 1698 an assembly under anti-proprietary influence passed an act declaring valid certain land grants of Carteret's time which contained an error in legal phraseology.<sup>3</sup> This measure was carried against bitter opposition by Willocks, who demanded that no such action should be taken without consulting the proprietors.<sup>4</sup> This was the only important law relating strictly to land carried against the proprietary interest, though in other ways, to be noticed later, the assembly sought to destroy proprietary influence. Another act of 1698 was nevertheless important.<sup>5</sup> This law enacted that the public records should be kept at Perth Amboy and that the register should enter all public affairs, all grants and patents of land, and all deeds or conveyances, which deeds those concerned must record within six months if inhabiting within the province. Deeds were to be first acknowledged by the grantor or proved by one of the witnesses before the governor or one of the council, who was to endorse the fact upon the deed. Such deed was then to be good despite any

<sup>1</sup> Leaming and Spicer, *op. cit.*, p. 298.

<sup>2</sup> *Ibid.*, p. 315.

<sup>3</sup> *Ibid.*, p. 362.

earlier conveyance not recorded.<sup>1</sup> But nothing in the act was to prejudice any outside of East Jersey. In so far as the keeping of the records went, this act merely sanctioned earlier practice.

Just before the end of the proprietary period the proprietors themselves took certain important steps. On February 21, 1698, the council of proprietors ordered a new dividend in the province of five thousand acres to a propriety. Further, on December 2, 1702, an addition of two thousand five hundred acres was ordered. A general direction was then given to the surveyor general to survey to each proprietor his share without further particular order. This regulation virtually dissolved the council of proprietors, as the examination of claims to land was its chief function. But a former regulation was then renewed that no survey should be made to any whose title did not appear upon record with the proprietary register, who by means of this usually certified to the surveyor general the title of such as wished lands laid out.<sup>2</sup> It was in confirmation of this order that the act of assembly of 1698 was apparently passed.

A discussion of the further changes in the land system belongs under the royal period. So far, to 1703, the general conditions are reasonably plain. We must now turn our attention to the interesting and persistent efforts made during this period to overthrow the system of the proprietors.

<sup>1</sup> Leaming and Spicer, *op. cit.*, p. 369.

<sup>2</sup> *Elizabethtown Bill in Chancery*, p. 17.

## CHAPTER IV

### LAND TROUBLES IN EAST JERSEY

To students of political history the struggle between the proprietary and anti-proprietary parties in East Jersey has naturally furnished one of the chief threads of interest down to the establishment of the royal government in 1703. Certainly the rebellious proceedings beginning in 1670 and in 1698 furnish the most striking events in the history of the province during this period. The true causes of the disturbances have, indeed, been carefully explained by certain authorities,<sup>1</sup> though it must be admitted in a somewhat partisan spirit. Yet, they are assuredly not generally understood. It is usually stated that the rebellious elements, constituting probably a majority of the people of East Jersey, were actuated specifically by a wish to be rid of the quit-rent due to the proprietors under the Concessions, and that in a more general way they opposed the entire proprietary system and all the old-world ideas connected with it. As opposed to the proprietary title they are said to have advanced the plea of Indian right, namely, that inasmuch as they had purchased their lands from the Indians, the settlers themselves became the rightful owners, and that all attempts of the proprietors to force further payments were unjust and illegal.<sup>2</sup>

The opponents of the proprietors were at bottom actuated chiefly by the desire to escape from the hated quit-rent and by a general dislike for proprietary privileges, especially when in the hands of persons like Carteret or the Twenty-four, who were not in close sympathy with the colonists or their ideals.<sup>1</sup> It is also true that the plea of Indian right was advanced and doubtless was believed in by many who shared in the uprisings. Yet, though these things are true, they are by no means the whole truth, and the student who goes no deeper must fail to comprehend the anti-proprietary movements in their true light.

The real issue, so far as it was specific in character, was as to the ownership of two large tracts of land in the province, embracing some of the most valuable territory and covering either wholly or in part five counties of the present state. These tracts are usually referred to by the somewhat confusing names of the Monmouth Purchase and the Elizabethtown Purchase. They were purchased from the Indians, and occupied, at least in part, by settlers from Long Island before the control of Berkeley and Carteret over New Jersey was established, and indeed before the transfer of the province from James of York to Berkeley and Carteret was known in America.<sup>2</sup> Both purchases had been made by permission of Col. Nicolls, at that time the governor of all the Duke's territories, and moreover were duly confirmed by him in proper legal form.<sup>3</sup> Stated in their simplest form, the questions growing out of these purchases were: (1), whether Berkeley and Carteret acquired legal title to these tracts which had already been

<sup>1</sup> Nicolls, *History of Elizabeth*, pp. 112, 113, 118, etc.

conveyed away by the Duke's legal representative; and (2), whether, therefore, the charge of quit-rent or any other payment required by the proprietors within these tracts was valid.<sup>1</sup> Modern writers have spoken chiefly of the matter of quit-rent, but this was, after all, only a subordinate issue growing out of the larger one as to the actual legal ownership of the soil. When we remember that the two tracts in question included a very large slice of the most valuable part of the province, the vital character of the issue is apparent.

The plea of Indian title alone was never seriously relied upon by the leaders of the anti-proprietary party. It was the grant or patent for the land given by Nicolls to which they pinned their faith. Since the days of Roger Williams the legal worthlessness of the claim from Indian purchase had become too well established in New England jurisprudence to allow them to commit such a legal error. Indeed the Elizabethtown men later complained bitterly that the proprietors were endeavoring to make them appear to be claiming from Indian purchase alone.<sup>2</sup> There is no doubt that many persons inhabiting districts outside of the Monmouth and Elizabethtown tracts made common cause with the settlers therein against the proprietors. The more ignorant among them perhaps believed that Indian right gave a valid title to all lands, though there is little contemporary evidence to show that such was the case. The fact is that the question of the Elizabethtown purchase formed an issue which served to rally about it all in the province who disliked the proprietary control.

Let us now examine a little more in detail both the legal

principles and the facts involved in the purchases. In the first place nothing can be more clear than that the confirmation by Nicolls of the Elizabethtown purchase to Baker, Ogden, Bailey, and Watson and their associates, December 1, 1664, and of the Monmouth purchase to William Goulding and associates, April 8, 1665, was invalid. All the transactions involved had taken place after the lands in question had passed from the hands of James, and Nicolls could not legally dispose of them to outside parties. That the transfer to Berkeley and Carteret was unknown in America cannot affect the principle. The purchasers of the land who acted on the authority of Nicolls had, it is true, a clear case in equity for the recovery of damages against the Duke and his agent. But this fact in no way affected the invalidity of their claim to land-title. Both the Elizabethtown and the Monmouth purchases were void by every principle of law known at the time.<sup>1</sup> But though this conclusion is unavoidable, it by no means follows that the claimants by the Nicolls grants acted in bad faith. There is no evidence to prove that they did not sincerely believe that their contentions were both legal and just.<sup>2</sup>

Although the questions regarding the two grants were very nearly similar, that of the Monmouth Patent did not give rise to such long-continued legal complications as the Elizabethtown Purchase. The Monmouth Tract embraced the lands between the Raritan and "Sandy Point," and reached back a considerable distance into the country. The purchasers were William Goulding, Samuel Spicer, Richard Gibbons, Richard Stout, James Grover, John Bown, John Tilton, Nathaniel Silvester, William Reape,

Walter Clark, Nicholas Davis, Obadiah Holmes, and their associates being from Gravesend and vicinity on Long Island.<sup>1</sup> The purchase made from the Indians by the original patentees appears to have been genuine,<sup>2</sup> although as usual there was some misunderstanding with the natives later;<sup>3</sup> and the land was occupied before the arrival of Philip Carteret.<sup>4</sup> In common with the other colonists the settlers did not take out patents for the lands which they had occupied and apportioned. But unlike the men of Elizabethtown, they did not, with some exceptions, take the oath of fidelity to Berkeley and Carteret.<sup>5</sup> Moreover, they objected to and refused to recognize the governmental powers of the proprietors over their patent, unless the privileges granted to them by Colonel Nicolls were excepted.<sup>6</sup> Governor Carteret took steps to enforce their submission,<sup>7</sup> but before the matter could come to a definite issue, the 25th of March, 1670, the day upon which was due the first payment of the quit-rent, arrived. The demand for quit-rent, however, caused great disturbances throughout the province. There was a general refusal to pay the rent, and the proprietors' authority was successfully defied for about two years.<sup>8</sup> But in the disturbances the settlers of the Monmouth Patent took little part,<sup>9</sup> and when at length the lords proprietors made known their intention of enforcing their rights, they asked for a suspension

<sup>1</sup> *New Jersey Archives*, vol. i, p. 43.

<sup>2</sup> Salter, *History of Monmouth and Ocean Counties*, pp. 33-5.

<sup>3</sup> Smith, *New Jersey*, p. 63 (note).

<sup>4</sup> *New Jersey Archives*, vol. i, p. 183.

<sup>5</sup> *Ibid.*, vol. i, p. 51.

<sup>6</sup> Whitehead, *East Jersey under the Proprietors*, pp. 62-3.



of all steps against them until they could communicate directly with Berkeley and Carteret. This they forthwith did, and an agreement was reached by which, with certain other privileges, they received a confirmation of the lands covered by the Monmouth Patent to dispose of as they saw fit. But the said lands were to be conveyed by individual grants subject to the terms of the Concessions, and all claims under the Nicolls Patent were to be given up.<sup>1</sup> Thus the Monmouth controversy was apparently settled, and no more was heard of it for some time. The people of Middletown, however, as the outcome showed, were by no means satisfied. This town remained a center of dissatisfaction with the proprietary control, and claims for exemption from quit-rent were later brought forward in spite of the agreement.

The question of Elizabethtown was even more serious in its consequences, and hence we must give it more detailed consideration. It is however a peculiarly trying question for the student. A wealth of material indeed exists. Every scrap of available evidence was seized upon in the numerous suits growing out of the purchase, and the whole has been preserved in the Elizabethtown Bill in Chancery and the Answer to the Bill in Chancery, prepared probably in 1745 and 1757 respectively,<sup>2</sup> at the time of the celebrated suit in chancery between the proprietors of East Jersey and the associates of Elizabethtown. These statements were prepared by the most distinguished legal talent available,—James Alexander for the proprietors, and William Livingston and William Smith, Jr., the historian, for the

townspeople.<sup>1</sup> Even for those to whom these rare works are not available, excellent secondary discussions of the case are to be found in the works of Whitehead, who favors the proprietors, and in Hatfield's History of Elizabeth, which is a plea for the associates. But in spite of all this material, the evidence which is really essential appears to have perished. Until the Town Book of Elizabethtown is recovered we cannot know what took place during the earliest years of the settlement, and without such knowledge no final judgment of all the aspects of the case is possible. It was always claimed by the proprietors that the Town Book was deliberately concealed or destroyed by the associates.<sup>2</sup> This charge, however, the associates resolutely denied, and tried to cast the blame upon their opponents.<sup>3</sup>

Of some things, however, we can be sure. The original petition to Nicolls for permission to purchase lands across the bay was dated September 26, 1664, and signed by six settlers of Jamaica, Long Island: Bailey, Daniel Denton, Benedyck, Foster, Nathaniel Denton, and Watson.<sup>4</sup> Nicolls' consent was given on September 30, and on October 28, John Bailey, Daniel Denton, and Luke Watson entered into an indenture with three Indian sachems for "One parcel of Land bounded on the South By a River commonly called The Raritan River And on the East by the River which Parts Staten Island and the Main and To Run Northward up after cull Bay Till we come at the first River which setts westward out of the said Bay aforesaid and To Run west Into the Country Twice the Length as

it Is Broad from the North to The South of the aforementioned Bounds." Bailey, Denton and Watson made the purchase on behalf of themselves, "Their Associates, their heirs and Executors."<sup>1</sup> On December 2, Colonel Nicolls confirmed the ownership of the tract to Capt. John Bailey and Luke Watson and their associates. They were to hold the land, "Rendering and paying yearly unto his Royal Highness, The Duke of Yorke, or his assigns, a certain Rente according To the Customary Rate of ye Country for New Plantations." Further liberty was also given to purchase land as far as Snake Hill.<sup>2</sup>

In these transactions there were certain minor defects. The lands in question were already covered by an old Dutch purchase of Augustine Hermans. But this fact was overlooked. It was also peculiar that only one of the chiefs mentioned on the face of the indenture signed that document, while an unmentioned sachem fixed his mark.<sup>3</sup> It likewise appears plain that though the remuneration was actually paid to the Indians after some delay, they gave up their control of only a portion of the territory, namely as far as the famous Minnisinck Path, the name given to an important Indian trail crossing the Raritan at Kent's Neck, and leading to the Rahway River which it followed. West of this trail the settlers were obliged to make new purchases. But these defects were hardly vital.<sup>4</sup>

The boundaries of the purchase seem clearly stated in Nicolls' patent, and yet it was over these boundaries that a bitter controversy was raised. The patent said that the land should be bounded by Raritan River and Staten Island Sound, and run northward "up After Cull, (i. e. Newark), Baye till you come to the first river which

sets westwards out of the said Bay." It was to extend into the country "twice the length of the breadth thereof from the north to the south."<sup>1</sup> The conflict was as to what was meant by the "first river which sets westward out of the said Bay." It was the claim of the Elizabethtown men that the Passaic River was designated,<sup>2</sup> but the proprietors later insisted that the little stream known as Bound Creek because it long formed the line between Elizabethtown and Newark, was intended.<sup>3</sup> The debatable land included several thousand acres, and Newark itself. It was therefore a very valuable stake. Some extremists of Elizabethtown appear later to have laid claim to all the land as far as Snake Hill, taking advantage of Nicoll's permission to purchase to that point.<sup>4</sup> But no serious effort was made to maintain this untenable position. The Bill in Chancery states that the entire territory from the Raritan to the Passaic contained above 400,000 acres of the best land in the province.<sup>5</sup>

Another doubtful point is as to the associates of the purchasers. These associates are mentioned in both the Indian purchase and Nicolls' confirmatory grant, though not in a definite way. Taking this into consideration, as well as the tradition to the effect that a society of associates existed previous to the settlement<sup>6</sup> and the fact that the people of New England almost invariably set about making new settlements in companies or congregations, we must conclude that Bailey, Denton, and Watson were acting on behalf of a number of pro-

<sup>1</sup> *New Jersey Archives*, vol. i, p. 18.

<sup>2</sup> Hatfield, *op. cit.*, p. 119.

<sup>3</sup> *Elizabethtown Bill in Chancery*, 20 June 1683.

spective settlers.<sup>1</sup> But to what extent they were organized, and whether they were in any legal sense shareholders in the enterprise, are matters of doubt. The proprietary contention was always that Bailey, Denton, and Watson were alone concerned in the purchase, and that the celebrated company of eighty associates was not formed until after the arrival of Philip Carteret and the foundation of the new town.<sup>2</sup> As partial proof they referred to a copy of a minute from the lost Elizabethtown Book, which states that at a "Meeting Court" held February 19, 1665-6, it was agreed by the freeholders and inhabitants, by the approval of Governor Carteret, that the town should consist for the present of four-score families, and that an addition of twenty more might be made later if desirable. This the Bill in Chancery claims to be proof that the eighty associates were associates only in founding Elizabeth, and not in the Nicolls grant.<sup>3</sup> Such evidence, however, is hardly very strong, while the inherent probability that the purchase was co-operative is great.

The early relations between Philip Carteret and the settlers present several points of doubt. It has been asserted that the associates had already established a numerous settlement upon their purchase before Carteret arrived,<sup>4</sup> but the only contemporary evidence, though it is of an unsatisfactory character, states that only four families were inhabiting there.<sup>5</sup> In any case, no disagreement between the new governor and the planters regarding the land or Carteret's pretensions to govern seems to have occurred.

<sup>1</sup> A little positive evidence seems to be offered in *New Jersey Archives*, vol. i. p. 504.

Carteret and his company were welcomed and joined in founding the town to which Carteret gave the name. Carteret, moreover, soon after obtained a share in the enterprise by purchasing the interest of John Bailey,<sup>1</sup> though there was dispute later as to whether this amounted to a third interest in the entire Indian purchase or merely to one of the eighty shares in the coöperative undertaking. Vauquillin, also, the French surveyor, who arrived with Carteret, was admitted as an associate.<sup>2</sup>

Since no record exists of any agreement between Carteret and the associates, great interest attaches to such acts on their part as seem to indicate their understanding of the situation. A careful study of what occurred certainly seems to indicate that the settlement was made under the Concessions, rather than in virtue of the Nicolls grant, and mutual agreement. On February 19, 1665, sixty-five male inhabitants of Elizabethtown took the oath of fidelity to Berkeley and Carteret, thus, it would seem, expressly recognizing their claims.<sup>3</sup> Further, in December, 1666, Carteret, Ogden, and Watson sold to Daniel Pierce and his associates a large share of the Elizabethtown tract for the settlement of Woodbridge and Piscataway. There was no recognition that any except the three patentees were concerned in the bargain.<sup>4</sup> Further, as mentioned in the preceding chapter Carteret commissioned John Brackett to lay out the lands of the settlers and set the bounds of the township, while on two occasions the governor and council forbade the cutting of timber within Elizabethtown.<sup>5</sup> The settlement of Newark, too, which fell within the bounds of the Elizabeth-

town purchase, as later claimed by the associates, was arranged by Carteret apparently without opposition.<sup>1</sup> There is evidence to show, however, that the bounds between Newark and Elizabethtown were arranged by mutual agreement between the two towns.<sup>2</sup>

In contradiction to these acts which show clearly a recognition of Carteret's power, the upholders of the associates have been able to say merely that the taking of the oaths was the result of fear, and that the other steps were taken with the consent of the town.<sup>3</sup> But there is nothing to show that such was the case. It is, of course, true that no inhabitants of Elizabethtown took out patents, but neither did the people of the other towns, and Carteret, so far as we know, made no effort to enforce the patenting of lands until 1670.

The first demand for quit-rent, however, changed the entire situation. There was a general refusal by the associates of Elizabethtown either to pay the rent or to take out patents, and this refusal was soon accompanied by riotous demonstrations against the proprietors' authority. Philip Carteret had brought with him eighteen male servants, several of whom had by this time served their terms. Upon one, Claude Valot, the governor in February, 1669-70, bestowed a third lot right in the town which he had acquired by purchase, and also declared Valot to be "a true Denizen" of the province.<sup>4</sup> This act had apparently caused dissatisfaction, for when, in the spring of 1671, Carteret, without consulting the town, made a small grant of land to another former servant, Richard Michell, it was agreed by the associates, in a meeting of June 19th, that Michell should

not have the land, and that his fence should be pulled down on the next morning. Accordingly, upon the next day, the townspeople, led by some of the most prominent men, as William Meaker, John Ogden, Jr., Jeffry Jones, and Luke Watson, assembled, pulled down Michell's fence, and destroyed his garden.<sup>1</sup>

This was the beginning of open conflict between the people of Elizabethtown and the governor. Meaker, Jones, Watson and their confederates, were tried by a special court of oyer and terminer, with a jury drawn from Woodbridge and Bergen, and fined, but defied the authority of the court.<sup>2</sup> In this conflict the Elizabethtown men had the support of most of the inhabitants of the other towns, although their people had no reasonable grounds whatsoever for refusal to obey the Concessions. The people of Newark had offered payment of the quit-rents in wheat instead of lawful money as the Concessions required.<sup>3</sup> But, when the offer was not accepted, they coöperated with the anti-proprietary faction. Bergen also refused the rents, while delegates from even Woodbridge and Piscataway attended the unauthorized assemblies of 1672.<sup>4</sup> Cohesion was given to the opposition to the governor by the appearance upon the scene of Capt. James Carteret, a son of Sir George, who was then on his way to Carolina, of which he had been appointed a "landgrave." James Carteret seized the opportunity to gain power at the expense of his kinsman, readily allowing himself to be made the nominal leader of the malcontents.<sup>5</sup>

<sup>1</sup> Hatfield, *op. cit.*, p. 137; *New Jersey Archives*, vol. i, pp. 84-86.

<sup>2</sup> *New Jersey Archives*, vol. i, pp. 80-87.

<sup>3</sup> *Town Records of Newark*, p. 30.

<sup>4</sup> Whitehead, *East Jersey under the Proprietors*, p. 66.

<sup>5</sup> *Ibid.*, p. 67.



Against this formidable uprising Philip Carteret struggled in vain until, at length convinced of his helplessness, he commissioned Capt. John Berry as his deputy, and left East Jersey for England to lay the entire case before Berkeley and Carteret in person.<sup>1</sup> The result was decisive. King Charles himself was induced to order a letter written to Berry, recognizing his authority and authorizing him to command obedience,<sup>2</sup> while James of York also wrote to Governor Lovelace, of New York, declaring the Nicolls grants void and instructing him to give information of its invalidity to the "contentious persons" who were opposing Berkeley and Carteret.<sup>3</sup> The lords proprietors themselves issued a proclamation directly to the planters of East Jersey,<sup>4</sup> while in the Declaration of the True Intent of the Concessions they changed the provisions of the Concessions, as has been previously pointed out, in such a way as to curtail the power of the assembly to do mischief. It was ordered that the arrears of the quit-rents of Elizabethtown, Newark, Piscataway, and the two towns of the Navesinks, should be paid in three years from 1673.<sup>5</sup> On the other hand, the upholders of Berkeley and Carteret were rewarded, the town of Woodbridge, which had been in the main loyal, receiving a remission of one-third its quit-rent for seven years to come.<sup>6</sup>

Before this formidable show of authority the opposition to the proprietors naturally gave way. Berry promptly published the document sent him, and set a time limit for the submission of the malcontents.<sup>7</sup> Some of those who had

<sup>1</sup> Whitehead, *op. cit.*, p. 69; *New Jersey Archives*, vol. i, pp. 91, 94.

<sup>2</sup> *New Jersey Archives*, vol. i, p. 107.

<sup>3</sup> *Ibid.*, vol. i, p. 97.

<sup>4</sup> *Ibid.*, vol. i, p. 101.

borne a leading share in the rebellion were punished. William Meaker was compelled to forfeit his estate to William Pardon, one of Carteret's council, who had been arrested and forced to flee by the insurrectionists, while a number of others were fined ten pounds.<sup>1</sup> But before the proprietary authority had been completely restored, the chain of events was suddenly interrupted by the Dutch reconquest of New Netherland.<sup>2</sup> This event has an interesting connection with the Elizabethtown dispute.

James Carteret had left East Jersey for Carolina in a sloop commanded by one Samuel Davis. With him was Samuel Hopkins, a settler of Elizabethtown, who had been identified with the anti-proprietary faction. The sloop, however, fell in with the Dutch squadron of Evertsen and Binckes, and was captured. Davis was promised the restoration of his vessel if he would give information regarding the defenses of New York, but he, nevertheless, stated untruthfully that the province was well defended. Thereupon Hopkins declared that Davis had replied falsely, and revealed the real weakness of the colony. This incident undoubtedly encouraged the Dutch in their venture. Carteret was put ashore in Virginia, but Hopkins was brought north with the fleet, and after the conquest reappeared in Elizabethtown.<sup>3</sup>

During the brief period of Dutch rule the advantage lay with the associates and their supporters, for not only were further coercive measures prevented, but the local governments organized on the Dutch plan, which took the place of the provincial government, were chiefly in their hands,

dently continued, however. By an appeal to the Council of New Netherland, Capt. Berry and Sandford seem to have foiled an attempt by Hopkins to get possession of the records of the late proprietary province.<sup>1</sup> On the other hand, Vauquillin, Carteret's surveyor general, was banished for endeavoring to remove goods from Philip Carteret's house and for making threats.<sup>2</sup>

The re-establishment of English rule after the Treaty of Westminster brought with it the temporary downfall of the anti-proprietary party. Legally it would seem that the Dutch conquest, the recession, and the eventual reconveyance of the entire province from the Duke of York to Carteret, must effectually cut off any validity which the claim from the Nicolls grant might have. The return of Governor Carteret, armed with ample power from the proprietors, brought the same result practically. His instructions commanded him not only to insist upon the immediate payment of the quit-rent, but also to dispose of all lands lying within the Elizabethtown tract which were not patented within a year. In case of refusal of the rent the constable of the town was to seize the goods of the party to the amount required. The only concession made was that, at the request of the governor and council, the rent might be paid in current money of the province instead of lawful English money.<sup>3</sup> The people of Elizabethtown made a feeble effort to compromise, offering, March 11, 1674-5, to pay twenty pounds annually in consideration of a township eight miles square. They declared that they had been deceived in regard to the badness of the soil, half or more

replied that no alteration from the requirements of the Concessions could be considered.<sup>1</sup>

The opposition then collapsed, and the patenting of land began. Among those who took out warrants for surveys are to be found every one of the original eighty Elizabethtown associates or their heirs or assigns, with the single exception of Benjamin Homan. The great majority also obtained surveys and patents. As Homan died a bachelor, his claim does not seem to have been continued.<sup>2</sup> The lands in Newark and Piscataway were also surveyed and patented at about the same period. Thus the Concessions were in effect fulfilled. It must be admitted, however, that considerable looseness in meeting their requirements is to be seen. Patents were never taken out on some of the surveys, nor do those actually recorded correspond exactly in all cases with the warrants.<sup>3</sup> The payment of quit-rents probably always ran behind. But the great point had been gained for the proprietors. These things were matters of carelessness or stealth, not of rebellious opposition.

A long period of quiet, so far as the land controversy is concerned, followed the submission to Carteret. A voluntary contribution was made by Elizabethtown and Newark to compensate William Meaker for the loss of his property,<sup>4</sup> but there was no effort at open opposition during Carteret's proprietorship. Indeed, the people of East Jersey were inclined to support their government against the claims of Andros to control over New Jersey. Under the circumstances this is rather remarkable.<sup>5</sup> It must not be understood, however, that the old claims were forgotten or that

<sup>1</sup> Hatfield. *op. cit.* p. 181: *Elizabethtown Bill in Chancery*. DD. 42-3.

the people of Elizabethtown willingly acquiesced in the triumph of the lord proprietor.

The Twenty-four proprietors used characteristic caution in dealing with the question of quit-rents and counter land claims. Not only did Governor Rudyard bring a conciliatory letter to the planters,<sup>1</sup> but the offer of the proprietors, in their "Brief Account," to sell out all the rents for fifty shillings on twenty-five acres, shows that they understood this matter to be a source of difficulty and desired to be rid of it. In May, 1683, Rudyard, in council, received committees from the inhabitants of the Monmouth Patent and from Elizabethtown with a view to adjusting difficulties. The committee from the "Neversinks" consisted of John Bowne, Richard Hartshorne, and Joseph Parker. They demanded, however, that "the patentees" should have their lands free, and afterward admitted that they were instructed to make no other agreement than one for payment of rent at half a bushel of wheat for one hundred acres. As these terms were not accepted by the governor and council, the conference ended unsatisfactorily.<sup>2</sup> Anti-proprietary feeling in Middletown not only continued, but developed, and it seems probable that no quit-rent whatsoever was paid. The efforts to arrive at any understanding with Elizabethtown were equally fruitless.<sup>3</sup> But the Twenty-four continued to make feeble efforts to adjust the question of rents. Gawen Lawrie was instructed to see if those planters who had large grants, which had been unused, and who were in arrears, would not be willing to give up fractions of their land in order to get rid of the rent permanently.<sup>4</sup> On the other hand, the new proprietors were

firm enough in their continual refusal to recognize the Nicolls grants, or to enter into any agreement with the claimants under them. Several references in the documents of the proprietors show clearly that the planters of Elizabethtown still voiced their old claims, and that they were regarded with apprehension.<sup>1</sup> No new incident in the controversy occurred for some time, however, except that, in 1684, Capt. John Barker is accused of having tried to deceive Governor Lawrie as to the extent of the original Elizabethtown purchase. He is said to have bribed the Indians to indicate a point well beyond the Minnisinck path as the bound of the tract bought, but to have been discovered and to have confessed his deceit.<sup>2</sup>

During this period of quiet many persons settled within the limits of the Elizabethtown tract and obtained lands there who were in no way connected with the original associates.<sup>3</sup> Many large proprietary surveys, as has already been indicated, also fell within the limits of the disputed territory. The Bill in Chancery gives sixty-two of these between 1682 and 1703.<sup>4</sup>

But in spite of the further concession of the proprietors, doubtless due to the continued difficulty of collection, that the quit-rents might be paid in the products of the country,<sup>4</sup> the old conflict was renewed. This came about as the result of the case of Jones *vs.* Fullerton. In 1693 Jeffry Jones, one of the original eighty associates, and a man who had taken an active part in the first riot, ejected James Fullerton, holder of a proprietary interest, from land occupied by him on Cedar Brook. The proprietors, in the

<sup>1</sup> *New Jersey Archives*, vol. i, pp. 429, 477.

<sup>2</sup> *Elizabethtown Bill in Chancery*, p. 44.

<sup>3</sup> *Ibid.*, appendix, schedule iii.

<sup>4</sup> *New Jersey Archives*, vol. ii, p. 85.

name of Fullerton, therefore brought an ejectment suit against Jones, the first of a long series of similar legal conflicts. The case was tried in May, 1695, in the Court of Common Pleas at Perth Amboy, and judgment was given for Fullerton.<sup>1</sup> Jeffry Jones therefore appealed the case to the King in Council, and journeyed to England to plead in person. In the rehearing of the case, in February, 1696-7, he had the advantage of the services of William Nicoll, agent of New York, as counsel.<sup>2</sup> The council of proprietors of East Jersey, on their part, dispatched Thomas Gordon to England as their agent.<sup>3</sup> But the result of the hearing was a reversal of the former decision and the triumph of Jones and the associates. The record of this case does not seem to have been preserved, for while the result is admitted, the parties later differed diametrically as to the reasons for the reversal of judgment. Nicoll declared under oath that the sole question at issue was the validity of the Nicolls grant,<sup>4</sup> but the proprietors asserted that the decision was changed because of error in the proceedings of the provincial court.<sup>5</sup>

Be this as it may, the result was far-reaching. The Elizabethtown associates at once addressed a petition to the King praying for further relief from the proprietors, declaring that they now had no legal government whatsoever, and asking to be attached to the royal province of New York.<sup>6</sup> The petition was, of course, merely an indication of an aggressive revival of the anti-proprietary movement. It was doubtless because of these signs of reviving discontent that the proprietors determined to dispose of their troublesome

<sup>1</sup> Hatfield, *op. cit.*, p. 242; *Answer to Bill in Chancery*, pp. 30-1.

<sup>2</sup> *Elizabethtown Bill in Chancery*, p. 44.

quit-rents altogether, and dispatched Willocks to East Jersey as their agent for the sale of them.

But other circumstances in the province as well aided in encouraging further agitation. In 1697, as will be explained more fully later, the proprietors deemed it necessary to remove Andrew Hamilton, who had given satisfaction as governor, and to appoint in his place the clever, but unreliable, Jeremiah Basse. Basse's commission, however, was not signed by the requisite sixteen proprietors, nor did he have the express approval of the King, which was now required by act of Parliament for all governors of plantations. For these reasons his authority in the Jerseys was questioned by many.<sup>1</sup> This was a very unfortunate situation, indeed, for, as things stood, only the greatest wisdom and firmness could avert dangerous disorder. But Basse, to secure his position, adopted deliberately the policy of alliance with the enemies of the proprietary order. In direct opposition to his instructions, he signed a bill sent up by the assembly which was inimical to the interests of the proprietors. He quarreled with Willocks, the agent for the sale of quit-rents, and abetted his expulsion from the assembly to which he had been chosen.<sup>2</sup> He also made every effort to discredit the Scotch proprietors by endeavoring to implicate them with the smugglers and pirates who frequented the coast.<sup>3</sup> As a result he was denounced and defied by the more vigorous among the proprietary adherents, and a regular insurrection headed by Morris and Willocks was narrowly averted.<sup>4</sup>

Such encouragement naturally gave the anti-proprietary party every opportunity for development. And when, in

<sup>1</sup> Whitehead, *East Jersey under the Proprietors*, pp. 194-8.

<sup>2</sup> *Ibid.*, pp. 199-202.

<sup>3</sup> *New Jersey Archives*, vol. ii, p. 288; Whitehead, *op. cit.*, p. 208.

<sup>4</sup> Whitehead, *op. cit.*, pp. 210-11.



1699, Hamilton was at length restored, he found his authority almost void.<sup>1</sup> His efforts to enforce the proprietary laws gave rise at once to disorders far more dangerous than those of 1670-3. Proprietary courts at Elizabethtown, Newark, Piscataway, and Middletown were assaulted and broken up, amidst scenes of violence and confusion. Proprietary officers were beaten and insulted, persons arrested for disorder were rescued from prison, and when Hamilton raised a force to maintain his authority, he was met, in Monmouth County, by a larger force and compelled to retire.<sup>2</sup> Throughout the insurgents evidently acted more or less in concert, on several occasions appearing in military array, with drums and colors. The men of Elizabethtown and Middletown naturally took a leading part in these disturbances. Proprietary authority came virtually to an end in East Jersey, and the efforts of the proprietors to recover their control were to an extent nullified by the discreditable feud between Dockwra and his associates.<sup>3</sup>

It is very evident that "the Revolution," as the overthrow of proprietary authority in East Jersey was called, was to a considerable degree the immediate result of political causes. These, however, as can be seen, were closely interwoven with the land controversy. The Elizabethtown claimants at once took advantage of the downfall of their opponents. In the fall of 1699, it was voted in town meeting to proceed to the apportionment of the lands granted by Nicolls which had not yet been divided. Accordingly, John Harriman, Jr., the eldest son of the minister, was elected surveyor for this purpose, and Jonathan Ogden, Benjamin Lynn, John Clarke, Samuel Carter and Cornelius Hatfield were chosen assistants. They began their work

<sup>1</sup> Whitehead, *op. cit.*, pp. 213-218.

<sup>2</sup> *New Jersey Archives*, vol. ii, pp. 313, 315, 333, 362.

<sup>3</sup> Whitehead, *op. cit.*, pp. 215-218.

on December 26, 1699, and proceeded to survey and divide into lots about 17,000 acres, extending from the Newark line on the north to the Woodbridge line on the south, with entire disregard to proprietary surveys for the same ground. Their survey, of course, covered land beyond the Minnisinck path, but they did not appropriate Newark lands. The land was divided into 171 lots, mostly forty by twenty-six chains, which were duly distributed among the associates, and most of which were actually occupied.<sup>1</sup>

This division was known as the Clinker Lot Division, and those holding by it the Clinker Lot Right men.<sup>2</sup> The terms were later rejected by the associates as unwarranted nicknames,<sup>3</sup> but, as any unworthy significance in the names has long passed away, they may be conveniently used by the student. It was charged by the proprietors that the Clinker Lot Division was made secretly, and by only a part of the people of Elizabethtown, but the action was certainly open and approved by the town meeting.<sup>4</sup> It is very evident that many, at least, of the new comers to the town made common cause with the original associates and their heirs.

The surrender of the governmental authority of the province to the Crown came chiefly as a result of the utter inability of the proprietors to cope with the disorders. When they could not prevent their own lands from being given away by the wholesale, substitution of a stronger power was their only salvation. But the royal government thus had to face a situation of peculiar difficulty. The proprietors and their opponents, now embittered by three decades of contention, each looked to the new authority for

## CHAPTER V

### POLITICAL CONDITIONS IN EAST JERSEY UNDER THE PROPRIETORS

THE brief examination of the land system of East Jersey will enable us to understand much more clearly the political conditions of the proprietary province. The proprietors of the American colonies in addition to being landlords, were, of course, "vice-kings" possessing the power to institute and maintain government over their respective territories. From the beginning, however, there was uncertainty as to whether Berkeley and Carteret were proprietors in this double sense. To the modern student it must be clear that the deeds of lease and release from the Duke of York did not legally convey the power of jurisdiction over the lands given. But Berkeley and Carteret certainly believed that they were fully entitled to set up a government over New Jersey. The result was a serious controversy between James and the two noblemen and their assigns. This dispute, however, can best be considered in a separate chapter. We need only say here that during most of the period the proprietors of New Jersey maintained an independent government, and that in the end James surrendered his claims.

Directly after the grant of 1664 Berkeley and Carteret, following the usual proprietary practice, issued their Concessions,<sup>1</sup> which, in addition to establishing the land system

<sup>1</sup> *New Jersey Archives*, vol. i, p. 28.

of their province, set forth its form of government and guaranteed certain private rights to settlers. The liberality of the political provisions has often been praised;<sup>1</sup> and they do clearly show that Berkeley and Carteret were to a large degree free from the fantastic and mediaeval notions of lordship which afflicted some proprietors. They were not indeed theorists on the subject of government, and their object was simply to attract settlers. The Concessions were, however, merely a copy of a similar instrument issued shortly before by the proprietors of the Carolinas for their projected settlement at Cape Fear.<sup>2</sup> The merit of Berkeley and Carteret lies simply in the fact that they adopted and retained the Concessions.

The government of New Jersey was to consist of a governor and council of not less than six nor more than twelve persons chosen by him, and of an assembly of twelve representatives chosen by the freemen of the province. All who were or should become subjects of the King of England and swear or subscribe fidelity to the lords proprietors were to be freemen. • The general assembly was to appoint its own times of meeting and adjournment and to fix its own quorum. It was to enact all laws for the welfare of the province, provided that they were within reason and as near as might be agreeable to the laws of England. Such laws were to remain in force one year, unless meanwhile confirmed by the lords proprietors. The general assembly was further to constitute courts, to raise taxes, to erect manors, constitute ports and harbors, and divide the

declared that no persons should be interfered with in matters of conscience or religion, provided they did not disturb the peace, and as a special guarantee of such liberty the general assembly was to appoint as many ministers as they saw fit and to provide for their maintenance. But liberty was reserved for any one to maintain other ministers if he so desired.

The lords proprietors dispatched as their governor Philip Carteret,<sup>1</sup> a distant relative of Sir George, and at the time a young man of only twenty-six. In his hands was therefore placed the actual carrying-out of the Concessions. Of his previous career and, indeed, of his character outside of his official acts, little is known. But he certainly showed both firmness and caution as governor, and although his administration was a disturbed one, the cause lay in conditions beyond his control.<sup>2</sup> In his council, however, the leading influence certainly seems to have been held by James Bollen and Vauquillin, both officers of the proprietors, William Pardon, who seems to have accompanied Carteret from England, and Capt. John Berry, one of the planters of New Barbadoes. Among the members were Samuel Edsall, Capt. Nicholas Verlett, William Sandford, and Lawrence Andriesse, of Bergen, John Pike and John Bishop, of Woodbridge.<sup>3</sup> But the New England element in Elizabethtown and Newark was represented only for a short time by Robert Bond.

There is no doubt that the liberality and comparatively democratic spirit of the Concessions had much to do with the rapid settlement of East Jersey, and especially with the

<sup>1</sup> *New Jersey Archives*, vol. i, p. 20.

willingness of the New Englanders to venture there. The institution of vigorous town governments in the several settlements, however, naturally made the provincial authority somewhat less important, and Carteret did not deem it necessary to call a meeting of the assembly till 1668. This first representative body of New Jersey met at Elizabethtown, and its members were chosen in true New England fashion, two from each town.<sup>1</sup> Its chief work was the passing of a bill of "pains and penalties," which enforced many of the provisions of the Levitical Law, thus showing the survival in New Jersey of the spirit of the New Haven of Davenport and Eaton. It also laid the foundation of a system of provincial taxation by levying five pounds upon each town for the expenses of the assembly.<sup>2</sup> In November of the same year a second session was held,<sup>3</sup> but it was notable only for the beginning of that difference of opinion between the governor and council on the one hand, and the elected representatives on the other, which was so characteristic of all colonial legislative procedure. The point of difference seems to have been as to whether the assembly should sit with the council, as the representatives demanded, or separately, as was required by Carteret.<sup>4</sup> As a result the body adjourned on the fourth day without having accomplished much of importance.

Meanwhile the quarrel with the towns of the Monmouth Patent had begun. The Nicolls grant had given the settlers of Middletown and Shrewsbury the power to make such rules and regulations for their own government as

assembly for this purpose had been held at Portland Point in June, 1667. Moreover, the people of Middletown and Shrewsbury refused to allow the laws of the first provincial assembly to be published or enforced within their limits, but in taking this attitude they relied upon the claim that their representatives had not been legally elected. They professed their willingness to choose new delegates, but required that there should be a proviso in their oaths expressly recognizing the privileges granted to them by Nicolls.<sup>1</sup>

As the representatives of Middletown and Shrewsbury would not take the oaths without the proviso, they were excluded from the second session of the assembly.<sup>2</sup> The assembly also appointed commissioners to visit the refractory towns to collect their share of the rates that had been levied, and to learn their exact position on the questions at issue.<sup>3</sup> But while these commissioners were not met by violence, they received no recognition from the Monmouth settlers. The latter at the same time issued an address declaring that they would rely upon their grant from Nicolls by which they were to be exempt from all payments for seven years. At the same time, since New Jersey had been assigned to Berkeley and Carteret, they were willing to be responsible to them "in all such acknowledgements as others his Majestie's subjects doe in the government of New Yorke to his Royal Highness."<sup>4</sup> For adopting this position the people of Middletown and Shrewsbury were by the general assembly of 1671 declared guilty of contempt of the lawful authorities of the province.<sup>5</sup>

Before Governor Carteret was able to bring the Mon-

<sup>1</sup> *Town Book of Middletown*. v. 2.

mouth people to terms, his own authority was practically nullified by the anti-quitrent disturbances of 1670. As a means of coping with the opposition, the governor authorized the courts of Woodbridge and Bergen, the only two in the colony, to try all cases brought before them, even when the parties came from outside their jurisdiction.<sup>1</sup> But this and all similar steps were alike futile. The power of the provincial government could no longer be enforced.

During the period of disorder and confusion several meetings of bodies claiming to be assemblies were held. There was an assembly in 1671, and in March, 1672, representatives from all the towns except Middletown and Shrewsbury assembled, but Carteret and the council would not recognize the meeting as a lawful one, and all its records were suppressed by William Pardon, assistant secretary of the council, who seems to have had charge of them.<sup>2</sup> Not to be thus foiled, however, delegates from the towns met again without either the knowledge or consent of the governor, and took the extreme step of electing Capt. James Carteret "President of the Country."<sup>3</sup> They based the right to do this upon a clause in the Concessions which, in the absence of the governor or his deputy, authorized the general assembly to elect a president.<sup>4</sup> A chairman was, of course, all that was intended, but the provision was interpreted to allow the assembly to create a new and rival executive when the governor regularly commissioned by the lords proprietors was actually within the province.

It is interesting to notice that, although the disaffected parties were in rebellion against the proprietors' govern-



to recognize the Concessions, and adopted as their leader the son of Sir George. Capt. James Carteret seems to have been a dissolute person, of little judgment or ability, who simply took advantage of the circumstances to bring himself into prominence.<sup>1</sup> After his election as "President," however, he was able to maintain himself against the governor and his council.

The mission of Philip Carteret to England, the energetic action of the lords proprietors, and the eventual collapse of the rebellion have already been described, for the resistance was, after all, directed rather against the proprietors' land system than the proprietary government. As for the reestablishment of Dutch rule, it forms an interesting episode, indeed, but it has little or no real connection with the political development of East Jersey. During the brief Dutch rule the towns were given governments of a schout and schepens, after the manner of the Netherlands.<sup>2</sup> Double sets of names were selected by the townspeople from which the magistrates were selected by the authorities at "New Orange." One assembly of the magistrates of Achter Kol, as the Dutch called New Jersey, was held at Elizabethtown to make laws for the colony, but its work was not of importance.

With the return of Philip Carteret and the reestablishment of his authority came certain alterations in the powers of the departments of the government brought about by the "Declaration of the true intent and Meaning of us the Lords Proprietors and Explanation of there Concessions," etc., issued by Berkeley and Carteret in 1672.<sup>3</sup> The object of these changes was to lessen the power of the assembly.

The right to regulate meetings and adjournments of the assembly, to establish courts in particular jurisdictions, and to nominate and appoint all officers, was now vested in the governor and council alone. The governor and council could also henceforth admit planters and freemen without the consent of the assembly, and no one was to be accounted a freeholder or have any vote or hold any office who had not taken out a patent for his land. In future, ministers were to be appointed by the governor and council upon nomination by the townships.

As the spirit of resistance was for the time being checked, these alterations in the powers of the government caused no immediate controversy, and as the governor wisely made no attempt to inflict serious punishment upon his opponents,<sup>1</sup> East Jersey entered upon a period of quiet so far as internal politics were concerned. The assembly met again in November, 1675, and from that time till 1681 it held numerous sessions and accomplished needful legislation. An act of oblivion was passed at the end of the first session, which, while allowing all judgments to stand, suspended further suits to recover damages against any concerned in the recent disturbances.<sup>2</sup> No serious party controversy occurred during the time, and the people showed an inclination to support their own government against the attempts of Andros to establish the power of the Duke of York over New Jersey.

The truce, however, could not be lasting, for, in addition to the special causes of party strife in East Jersey, cleavage between governor and assembly was practically inevitable

The chief point involved was the right of the proprietors to alter the original Concessions of 1664. This the deputies of the towns now denied. As the debate waxed warm, they refused to provide for the support of the government, or to enact that the constables of the towns should collect the proprietors' quit-rent as the council demanded.<sup>1</sup> They also ventured to style themselves the "General Assembly," taking the ground that this title applied only to the deputies without the governor and council, and not to all three taken together. As a result, the house was summarily dissolved by Carteret, but it did not disband without a formal protest against the dissolution.<sup>2</sup>

That the breach thus begun did not grow wider was due to the establishment of the government of the Twenty-four in place of that of Carteret. Both the new proprietors and the planters had all to gain by accommodation and agreement, and all to lose by a continuation of the strife of the recent administration. Thomas Rudyard, the London lawyer, who was the first deputy-governor under the Twenty-four, bore a conciliatory letter to the inhabitants of the colony,<sup>3</sup> and acting doubtless upon instructions, endeavored to allay factional differences. In March, 1682-3, he presided over a harmonious and useful session of the assembly. But in spite of his success in this matter, his administration was short owing to his want of energy in maintaining the land-interests of the Twenty-four.<sup>4</sup>

The Quaker, Gawen Lawrie, his successor, was careful to follow the pacific political policy inaugurated by Rudyard, though, like him, he did not consider the pecuniary interests of the Twenty-four superior to his own.<sup>4</sup> He brought with

him to East Jersey a curious document known as the "Fundamental Constitutions," which the Twenty-four had prepared to take the place of the Concessions of 1665.<sup>1</sup> Though the Fundamental Constitutions never went into effect, they must nevertheless retain a certain interest as illustrating the political ideals of the new proprietors. They provided that a governor should be chosen once in three years by a vote of sixteen of the proprietors. The governor was to rule the province, with the aid of two councils, which were to consist partly of the proprietors or their proxies and partly of representatives of the freemen, who were to be chosen by a mixed system of elections and the casting of lots. The freemen were to be such as held fifty acres of land. The Fundamental Constitutions, if carried out, would, of course, have given the proprietors more power in the government than they already possessed, while the people would have had relatively less. Yet the proprietors seemed to think their new system so desirable that they ordered Lawrie to apply it only to those who would submit to a resurvey and approval of their grants, provide for the payment of all back quit-rent, and agree to pass an act for the support of the government.<sup>2</sup> Naturally the colonists showed no desire to surrender their control of the assembly upon such terms, and Lawrie, seeing that confusion must result from an attempt to apply the Fundamentals, very sensibly laid them aside.

But though the proprietors were willing to conciliate the disaffected elements, they clung tenaciously to their legal prerogatives. Lawrie seems to have shown tact in avoiding quarrels, as the old opposition to the proprietary interests was still alive.<sup>3</sup> But his policy was negative, and he

<sup>1</sup> *New Jersey Archives*, vol. i, p. 395. <sup>2</sup> *Ibid.*, vol. i, pp. 430, 443-446.

<sup>3</sup> *Ibid.*, vol. xiii, pp. 72-5; vol. i, p. 477.

escaped conflict by not insisting upon the proprietary claims. He did not even call an assembly till April, 1686, and then nothing of account was accomplished. The appearance of indifference to any interests but his own was further increased by the fact that Lawrie continued to reside at Elizabethtown instead of at Amboy, in the settlement of which the proprietors were so concerned.<sup>1</sup> The proprietors, therefore, removed him from office and censured both him and Rudyard.<sup>2</sup>

The choice of a successor was, however, a mistake very characteristic of the period. In June, 1686, the proprietors named as governor Lord Neil Campbell, the brother of the ill-fated Argyle, who, owing to the downfall of Argyle, was seeking a temporary refuge from Scotland. How the Papist Earl of Perth and the Quaker Barclay could have consented to such an appointment is an enigma. The appointment is merely an example of the strangely contradictory steps which the Twenty-four, separated as they were in character, place and interest, sometimes took.<sup>3</sup> But a nobleman like Lord Neil had little desire to remain in East Jersey any longer than his own safety demanded, and after an uneventful stay of only a few months, he returned to Scotland, leaving the government in the hands of Andrew Hamilton, formerly a merchant of Edinburgh, a man possessing the Scottish qualities of prudence and tact in a high degree.<sup>4</sup> In him the proprietors were to find their first agent of ability. Before any marked results could appear from the change of administration, however, the proprietary government was overturned by King James, and New Jersey was

<sup>1</sup> Hatfield, *History of Elizabeth*, pp. 427-8.

united with New England and New York under his tool, Sir Edmund Andros. Just how this came about we shall investigate later. The change, for the time being at least, put an end to further political developments within the colony.

The people of East Jersey seem to have submitted to Andros with remarkable unconcern, nor was the overthrow of James the signal for any such uprising as marked the history of New England or New York. It would indeed appear that there was some little Jacobite sentiment among the more prominent planters,<sup>1</sup> and this is hardly a matter of surprise when we recall how closely several of the proprietors were associated with the Stuart interests. But the feeling about the transatlantic events was not strong enough apparently to form an issue in the colony. The fall of Andros left New Jersey without any regular government, but the people, under their town and county officers, suffered little inconvenience. There was naturally an element in the colony opposed to the reestablishment of the old proprietary rule, and the inhabitants "scrupled to obey" first John Tatham, known to be a Jacobite,<sup>2</sup> and then Col. Joseph Dudley, who were successively named to the governorship by the proprietors. But eventually the need of some regular government was recognized, and when Andrew Hamilton arrived in 1692 with a new commission, he was well received.

From this time until 1697 East Jersey enjoyed seeming political quiet. Regular meetings of the assembly, chosen according to the Concessions, were held, and under the shrewd guidance of Hamilton quarrels were avoided and useful legislation carried through. Yet this period was

merely the calm before a storm, for the revival of the Elizabethtown agitation in the case of Jones *vs.* Fullerton was certain to produce renewed party discord. With a less able hand at the helm the clash could not be long avoided.

In 1697 Parliament passed an act requiring all proprietors of colonies to present their respective governors to the king for approval, and "that no other than a natural born subject of England should serve in any public post of trust or profit." As Hamilton was a Scotchman, he was apparently covered by the act, and the proprietors, nervously anxious to retain the good-will of the royal authorities, felt obliged to dismiss him in spite of his excellent service. In his stead one Jeremiah Basse was named as governor of East Jersey.<sup>1</sup> The selection was unfortunate. Nothing is known of Basse's earlier life except that he had been an Anabaptist preacher.<sup>2</sup> But his later career shows that he was an adventurer of no very high type, one of a class only too prominent in most of the proprietary and royal provinces. Basse's appointment had previously been approved by the king,<sup>3</sup> but he avoided giving the security for good behavior required by the act, although the omission was called to his attention by the lords of trade.<sup>4</sup> This prevented the appointment from being officially confirmed, and opened the door for new difficulties. Moreover, it appeared that the commission of Basse was signed by only ten instead of the required sixteen proprietors.

The opponents of the proprietary régime were thus given plausible reasons for refusing to recognize the appointment of the new governor as valid.<sup>5</sup> Some of the resident pro-

<sup>1</sup> *New Jersey Archives* vol. ii p. 140.

prietors themselves, who looked upon the adventurer with no friendly eye, also questioned his powers.<sup>1</sup> Basse nevertheless entered upon his duties as governor, but, alarmed lest his authority should not be acknowledged, did not call the assembly till February 21, 1699. Then he adopted the bold course of forming an alliance with the anti-proprietary party, which was by this time showing dangerous strength, owing to the successful mission of Jeffry Jones. Thus he evidently hoped to gain popular support. He therefore consented to the passage of a bill, sent up by the anti-proprietary majority in the assembly preventing the election of any person as a deputy who was a proxy or agent of any proprietor.<sup>2</sup> This act was aimed especially at George Willocks, the agent for the sale of the quit-rents, who had been chosen as a representative of Perth Amboy; but its more general effect would certainly be to damage very materially the political influence of the proprietors. Though Willocks was thus forced to withdraw, the conflict stirred up was so violent that Basse thought it best to visit West Jersey, of which province he was also governor, upon the pretext that its affairs needed consideration. He appointed Andrew Bowne, long known as a bitter enemy of the proprietors, as his deputy in East Jersey.<sup>3</sup>

During this time Basse gave much attention to the pirates who infested the coast, and did good service against them.<sup>4</sup> Thus he endeavored to win the favor of the home government. He also tried in every way to connect the Scotch proprietors and settlers with the operations of the free-



apparently did little harm to persons as well known as Morris and his associates.

Basse's return to East Jersey led to renewed disorder. A new assembly met only to dissolve in confusion, and armed revolt was threatened by the adherents of the proprietors led by Morris and Willocks.<sup>1</sup> But at this juncture Basse was removed and Hamilton restored to office. The solicitor-general had given his opinion that a native of Scotland was not debarred from acting by the statute of 1697,<sup>2</sup> and the lords of trade, when applied to, replied that the right of the proprietors to govern the province was about to be submitted to trial, but that meanwhile no danger would be incurred by the restoration of Hamilton.<sup>3</sup> Hamilton was therefore recommissioned, and Basse left New Jersey before his arrival. It was now hoped by the proprietors that the ability of the old governor would again secure peace and quiet.

But with the encouragement they had received the anti-proprietary party had already grown too strong, and, moreover, the irreconcilables were able to make much of Hamilton's not having the formal approval of the crown.<sup>4</sup> Hamilton was obliged to employ a technicality in dissolving an assembly with a hostile majority, and the step led to the holding of seditious meetings in which preparations were made to defy the proprietary authority. A condition of violence and anarchy ensued. Proprietary officers were maltreated, and courts at Elizabethtown, Piscataway, and Newark were broken up amid scenes of the greatest violence.<sup>5</sup> At Middletown the insurgents were especially active, but when the governor raised a force to restore order there, he

was met by a stronger force and compelled to withdraw.<sup>1</sup> Actual bloodshed, indeed, did not occur, and the disturbances had many of the ridiculous incidents common to such movements in the colonies. Yet this result was due only to the weakness of the proprietors; the insurgents appeared in military array and showed determination.<sup>2</sup> Among their leaders, Richard Salter of Middletown, and Samuel Carter of Elizabethtown, made themselves especially conspicuous.

The immediate outcome was the end of proprietary government, and the governor himself was seized and temporarily imprisoned.<sup>3</sup> This period became henceforth known in East Jersey as the "Revolution," a term which in common parlance always signified this disturbance, "and not the glorious Revolution by the Accession of King William and Queen Mary to the Throne of Britain."<sup>4</sup>

Meanwhile a series of events, which we have later to trace, was leading to the assumption of control over the Jerseys by the Crown of England. This result was certain to come eventually, and now, although some of the proprietors continued to struggle against the wishes of the English government, the more long-sighted, like Morris, saw that nothing was to be gained by prolonging the condition of anarchy, and were anxious only to make the best terms possible for the protection of their interests. After extended negotiations, the surrender of all governmental power was eventually effected on April 15, 1702. Lord Cornbury was then commissioned as the first royal governor of the Jerseys, and order was restored.

## CHAPTER VI

### THE LAND SYSTEM OF WEST JERSEY

THE land system of West Jersey was intended by the proprietors to be as simple and just as could be devised. The confused and complex arrangements, modeled after the institutions of feudalism, had no place in a province where the democratic ideas of the Friends were to receive their practical test. But absolute mathematical accuracy was to prevent disorder and dispute. The first step was to be the division of West Jersey into ten equal parts, to be known as tenths. These in turn were to be subdivided each into ten smaller parts, to be known as proprieties or hundreds.<sup>1</sup> These divisions, it was hoped, could be sold to persons inclined to enter upon colonization, who would thus be added to the number of proprietors. Whatever other mistakes the Friends may have committed, they had at least no intention to monopolize the proprietary right to the soil of their province.

The arbitration between Byllinge and Fenwick as to their respective interests in West Jersey resulted in giving the latter ownership of one-tenth of the province, while Byllinge retained the other nine-tenths.<sup>2</sup> This was the first division of the soil. We have already noted, however, how Fenwick's share came into the ~~legal~~ possession of Elbridge and Warner, though Fenwick long refused to recognize their rights, while Byllinge was obliged to make over this

<sup>1</sup> *New Jersey Archives*, vol. i, p. 241.

<sup>2</sup> Mulford, *New Jersey*, p. 166.

illegal

nine-tenths to his trustees, Penn, Lucas and Lawrie, for the benefit of his creditors.<sup>1</sup> This arrangement could be readily carried out under the system of tenths and proprieties.

Penn, Lucas and Lawrie started their trusteeship happily by disposing of two considerable shares of Byllinge's purchase to his principal creditors. One whole tenth of the province went to Thomas Hutchinson, Thomas Pearson, Joseph Helmsley, George Hutcheson and Mahlon Stacy, all of Yorkshire,<sup>2</sup> while another large interest went to a group of Friends resident in London.<sup>3</sup>

Meanwhile, James Wasse, Richard Hartshorne and Richard Guy had been commissioned to proceed to the Delaware to make preliminary surveys, and in the next year settlement began. Before the founders of Burlington left England, however, the proprietors issued a document known as "The Concessions and Agreements of the Proprietors, Freeholders and Inhabitants of the Province of West New Jersey in America."<sup>4</sup> This was intended to form the basis for the government of the colony, just as Berkeley and Carteret's Concessions had done for East Jersey. But, being in the form of an agreement, it was signed as well by the "freeholders and inhabitants of the said province" as by the proprietors.

Naturally questions of land occupy a prominent place in the West Jersey Concessions. But it is evident that the requirements of actual colonization had already forced some alterations in the mathematical theories of the proprietors. It was first provided that all lands taken up by pur-

chase from the natives or otherwise should be divided into ten parts, and that the Yorkshire Friends, as the terms of their purchase entitled them, should have the privilege of selecting one of these. Other persons, holding ten parts, should then be allowed to choose any of the remaining divisions, while those holding interests not footing up to ten shares might nevertheless locate within any of the remaining parts. Such tenths were, however, to be divided into proprietries, and each settler was to receive as many of these as was due him.

Provision was also made for persons, not proprietors, "adventuring" in West New Jersey. But it is noticeable that such persons were required to have the consent of one or more of the proprietors, certified under their hand and seal. All who thus entered the province before April, 1677, were to have seventy acres for their own persons, and a similar amount for every able-bodied male servant transported. Whoever merely sent servants was likewise to have seventy acres for each. For each weaker servant over fourteen, fifty acres was given, and each servant entering West Jersey was to have fifty acres for his own use at the end of his service. But all such colonists must pay yearly to the proprietors to whom the land belonged one penny per acre for land in towns and one-half penny per acre for lands outside of town bounds, such payment to begin within two years after the lands were laid out.

The terms grew less liberal if settlers delayed. For all who entered West Jersey before April, 1678, amounts of fifty and thirty acres were offered on similar conditions. But the quit-rent was now put at a penny farthing per acre for land in towns and three farthings per acre for land in the country. All who entered before April, 1679, were to have amounts of 40 and 20 acres, for which the rent was put at one and one-half pence per acre in towns and one

penny for land outside. But upon all lands two able-bodied male servants or three weaker ones were to be maintained for every one hundred acres, beside the grant for the person of the master himself. If after three years from notification such conditions were not fulfilled, it might result in the loss of the land for twenty years, unless the general assembly judged the requirement impossible of fulfilment because of poverty or other reason. Proprietors inhabiting the province were to keep one person upon every lot taken up by them, and if said lot exceeded two hundred acres, they must keep one servant for every two hundred acres. All other proprietors must maintain a servant for every one hundred acres. But such conditions were to last for only ten years.

The general oversight of both the governmental provisions of the Concessions and those concerning land was to rest in the hands of ten commissioners. The first ten were appointed by the proprietors. Among them were Thomas Olive, Daniel Wills, John Penford and Richard Guy, all of whom played active parts in the early affairs of West Jersey.<sup>1</sup> But after the first year the commissioners were to be chosen annually by the proprietors, freeholders and inhabitants. At the first election they were to be chosen at a general meeting, but thereafter the inhabitants of each ten of the one hundred proprietries were to elect one commissioner.

When a grant of land was to be made, it was first to be recorded by the register of the province, who was then to make out a certificate to the surveyor to lay out, limit, and

survey in a book to be kept for the purpose. The entry was then to be endorsed on the back of the grant. Thus the process of obtaining land was more simple than in East Jersey. Only two records were made—that of the title and that of the return of the survey. The formal issuing of a patent under the seal of the province was dispensed with.

After the institution of the system of proprieties, which, as we shall see, was not carried out completely in practice, the greatest peculiarity, as well as the most creditable feature in the West Jersey Concessions, was the free election of the commissioners by the freeholders. Inasmuch, however, as no one could receive lands unless endorsed by the proprietors, there was little immediate danger to the proprietary interests in this provision. The terms of settlement were liberal, but no more so than those offered by Berkeley and Carteret, while the reservation of a quit-rent shows that the desire for profit was not entirely lacking. But as the rents were to be paid to individual proprietors, rather than to a proprietary office, their payment would have appeared more of a simple business arrangement than in East Jersey. As a matter of fact, we find little evidence of quit-rent being actually required at all. The question, of course, never became an issue as in East Jersey.

The Concessions and Agreements were at once put into operation. The expedition of 1677 was accompanied by representatives of the owners of the Yorkshire tenth, and also by the commissioners of the London creditors of Byllinge. These agents were charged with the duty of selecting the tenths of their respective principals. After purchase had been made from the Indians, the Yorkshire commissioners chose their tenth, reaching from the Falls of the Delaware down, while the London representatives took their land near the present site of Gloucester. But the London agents were eventually induced to change their location,

and take up their tenth immediately below that of the Yorkshire purchasers, joining with them in the settlement of the town of Burlington. A surveyor named Noble was employed to lay out the town, and the main street formed the division between the two tenths. Ten lots were laid out on each side of this to be distributed among the holders of the several proprieties.<sup>1</sup>

For a time there was some effort to carry out fully the original system of tenths and proprieties. In 1677 another entire propriety had been disposed of by Byllinge's trustees in satisfaction of debt to five Irish Friends,<sup>2</sup> and in 1681 representatives of these purchasers took up land in a new or third tenth, usually called the Irish tenth, reaching from Oldman's Creek to Pennysoakin Creek.<sup>3</sup> Three years later a fourth tenth, extending from Timber Creek to Oldman's Creek, was also beginning to be settled.<sup>4</sup>

But the arrangement soon proved itself unmanageable. Recognizing that it would be impracticable to take up an entire propriety at a time, the proprietors had originally agreed that each propriety owner should at first receive a dividend of 5,200 acres.<sup>5</sup> And in November, 1681, the commissioners still further modified the system by agreeing upon a set of rules regarding the distribution of land.<sup>6</sup> The surveyor was now ordered to measure the entire front of the Delaware from Assanpink Creek to Cape May, that the division lines for each tenth might be found. Each tenth

<sup>1</sup> Smith, *op. cit.*, pp. 98-9.

<sup>2</sup> *West Jersey Records*, liber B (part i), p. 50.

<sup>3</sup> Clement, *Proceedings of the West Jersey Surveyors' Association*, p. 30.



was to front on the Delaware, and 3,200 acres were to be allowed to each holder of a propriety, wherever he chose to take it up in the tenth. But all lands so chosen were to be taken up within six months or the choice was to become void. If, however, there was demand for land by actual settlers over and above the 3,200 acres to a propriety, the commissioners reserved the right to take it up to the 5,200 acres provided for in the first agreement. Finally, after other minor though necessary provisions, it was ordered that all persons who had already received land in the first and second tenths should show their deeds or writings, as proof of their proper title, to four of the commissioners named for the purpose.

Finally, on August 8th and 9th, 1682, it was ordered that Daniel Leeds, the surveyor, on or before the 7th of the tenth month next, begin to lay forth the several tenths by dividing the entire river front into ten equal parts.<sup>1</sup> But for some reason this order was never executed, and with it passes away the idea of a mathematical division into tenths.

The position of the commissioners in the land system also soon changed. Owing to developments, to be considered more fully in the next chapter, the governmental powers originally vested in the commissioners by the Concessions and Agreements passed in 1681 into the hands of a governor and council.<sup>2</sup> Commissioners were still chosen, however, to have charge of the apportionment of land, though they were elected by the assembly instead of directly by the people.<sup>3</sup> But the importance of the commissioners evidently decreased gradually until they became merely agents of the assembly, whose duty it was to examine

commissioners was lessened, and they were apportioned among the several jurisdictions and counties.

Finally, in 1687 the assembly declined further to look after purely proprietary affairs.<sup>1</sup> Thus ended the co-operation of the inhabitants of West Jersey in the apportionment of the lands. There was apparently no thought that an important power was being sacrificed.

It was now necessary for the proprietors to devise new means for the management of their business, and accordingly, on February 14, 1687-8, a general meeting of those holding interests was held at Burlington, and eleven persons, including Samuel Jennings and Thomas Olive, were selected to direct the affairs of the proprietors for the ensuing year. A definite agreement for the establishment of this "Council of Proprietors" was also drawn up and signed.<sup>2</sup> Soon afterward, however, the number of members of the council was reduced to nine, as more convenient.<sup>3</sup> Thus was instituted a body which continued during the colonial period to be the directing power in the land system of West Jersey.

The members of the council were elected annually, five being chosen at Burlington and four at Gloucester. The council itself selected its president, vice-president, surveyor-general, clerk and other officers. Thomas Olive was the first president of the council, and was regularly re-elected until his death in 1693. Thomas Gardiner was then chosen. He was succeeded by John Tatham, Francis Davenport, William Biddle, Andrew Hamilton, and Mahlon Stacy. Andrew Robeson was surveyor-general until his

tinued. John Reading acted regularly as clerk. Among other prominent members of the board were Samuel Jennings, William Royden, Peter Fretwell, and John Hugg. The council met regularly twice a year, in the spring and fall, but other meetings were held on occasion. At times of great importance all proprietors in the province were summoned to meet with the council.<sup>1</sup>

While the council assumed general control over all proprietary concerns, it acted upon individual claims for land only in peculiar or extraordinary cases. Commissioners were still annually appointed by the council in the counties, which had by this time taken the place of the tenths as administrative divisions, whose duty it was to examine all deeds for lands within their jurisdictions, and to issue warrants for the surveying and taking up of the same. But all proprietors applying for warrants must sign an instrument stating their willingness to pay their respective portions towards the management of the proprietary affairs. This arrangement continued as long as the proprietary government lasted. Samuel Jennings was the first commissioner named by the council for Burlington county, and John Reading for Gloucester.<sup>2</sup>

An early resolution of the council was one authorizing proprietors to take up their shares when and where they pleased. This brought definitely to an end the attempt to lay off the province mathematically, and substituted an arrangement like that in East Jersey, where the proprietors simply received dividends of the lands according to their respective interests. The council also endeavored to hasten the taking-up of lands by re-adopting the provision of an earlier act of the assembly, that all warrants for surveys not

executed within three months should be void.<sup>1</sup> It also addressed the English proprietors urging them to locate their shares without delay.<sup>2</sup>

The distribution of land in West Jersey, which had meanwhile been going on, offers some points of difference from that in East Jersey. The original dividend of 5,200 acres to a proprietary was soon followed by a second "taking up" of 5,000 acres. It was, of course, required that all such lands should be located within the tracts already purchased from the Indians. Only on special considerations did the council of proprietors grant to individuals the privilege of independent purchase from the natives. But from the first there were many proprietary shares which were not claimed.

Among the earlier settlers a large share held proprietary interests, and these naturally became the most considerable landholders in the province. Other settlers acquired interests after settlement. The recorded sales of fractions of proprietries are numerous, though usually only small interests were thus acquired.<sup>3</sup> One thirty-second of a propriety was the amount required for a voice in proprietary affairs. It must not be forgotten, however, that, as there were theoretically one hundred full shares in the West Jersey proprietorship as against twenty-four in East Jersey, the corresponding fractions of interests were of very different value in land.

But still many of the West Jersey settlers merely obtained surveys of land from some one of the proprietors. For these in most cases a consideration was paid averaging

persons obtaining less than this amount is comparatively small, while more extensive grants of 200,300, and even 500 acres are not rare. This shows that the holdings of the bona-fide settlers were somewhat larger in West Jersey than in East Jersey. As in East Jersey, the lands first taken up were those adjoining the Delaware and other navigable streams.<sup>1</sup> This fact led the commissioners in 1681 to forbid any one from taking up land on both sides of a creek, unless there was good cause, and a similar rule was reenacted by the council of proprietors in 1688-9.<sup>2</sup>

With the appearance of the West Jersey Society in 1691, an important new element is introduced into the land system of the province. The interests of the society were so extensive, including as they did more than one-fifth of the land of West Jersey, that their operations demanded really a separate system. The West Jersey Society was purely a business company, the object of which was to make profit from land sales. But the fact that it was an English company greatly handicapped it in its work, and forced it to rely upon more or less unreliable agents. The first agent for the care and sale of its lands was Jeremiah Basse, who had already acted in a similar capacity for Dr. Daniel Coxe, whom the society brought out.<sup>3</sup> His commission empowered him to take up lands, to inspect and direct the buying and selling of the company's goods, and to act to the best of his power in all their concerns. For a time Nathaniel Westland seems to have been associated with Basse, but in 1694 Basse appointed Joshua Barkstead, his own step-brother, as his as-

<sup>1</sup> *West Jersey Records*, liber B, *passim*; *New Jersey Archives*, vol. vii, pp. 201-211.

sistant.<sup>1</sup> In 1692 the society had commissioned Thomas Revell as register of deeds, and in 1696, when Basse left the province, he transferred 24,000 acres of the society's land to Revell as trustee, so that sales might not be interrupted by his absence.<sup>1</sup> In 1699 the agentship was given to Andrew Hamilton, whose administration as governor of the Jerseys had already proved his capacity. But upon Hamilton's death in 1703, Lewis Morris of East Jersey succeeded, thus adding to his already large influence in the Jerseys.<sup>2</sup>

The lands of the society were naturally located in the remoter parts of West Jersey. It obtained from Coxe, besides unapportioned interests, the great "Minnisinck Province," lying between the Delaware and the Blue Mountains, and estimated at 200,000 acres,<sup>3</sup> and also a survey of 95,000 acres, including all of Cape May County.<sup>4</sup> In addition to this, Basse, during his agentship, located 95,000 acres, chiefly in what is now Hunterdon County and on the Cohanzie River and Delaware Bay.<sup>5</sup>

But though Basse and Revell both appear to have been energetic, the society suffered greatly from the incapacity of its agents. When Morris was appointed he could obtain no accounting from Basse and Westland, who were in default with their accounts, so that the society could get no proper statement of what amount of land they had sold.<sup>6</sup> It is certain, however, that they had disposed of large tracts, and that the portions purchased were larger than in the earlier settled parts of West Jersey. The interests of the society also suffered greatly from squatters, but this was to some extent unavoidable.

pass upon proprietary lands, in spite of the annual selection of rangers by the council of proprietors. But the difficulties arising therefrom were not serious.<sup>1</sup> The hardest problem that the council had to face was undoubtedly that of establishing proper relations with Dr. Coxe, the West Jersey Society, and other proprietors in England. A friendly correspondence was maintained with Coxe. This related largely to the boundary-line controversy with East Jersey, in negotiating which Coxe received the support of the council. That body, however, desired Coxe, upon an intended visit, to bring a certificate of just what interests he had purchased. They endeavored also to obtain from the other English proprietors a statement of their holdings.<sup>2</sup>

When Coxe was bought out by "the Society," the problem became more serious, as the operations of that company were carried on independently of the council. In May, 1695, Jeremiah Basse, as agent for the society, appeared at a council, claimed thirty proprietries for his employers, and demanded a seat at the board, with as many "voats" as they held proprietries. But the council resolved that if Basse gave evidence of his rights, the West Jersey Society should have liberty to elect as many representatives, residents of the province, for the thirty proprietries as would be proportional to the number chosen for the forty proprietries held in Burlington and Gloucester Counties.<sup>3</sup> Apparently Basse did not accept this offer. The council then endeavored to secure the passage by the assembly of a bill prepared by itself "constituting" the council and putting proprietors under obligation to whatsoever should be transacted by it.<sup>4</sup> In May, 1698, the council was, however,

advised that the surveyor general was likely to be interrupted by one claiming under the society. Such an attack it prepared to resist by a process at law.<sup>1</sup> Yet, while Basse was governor little could be accomplished.

When Governor Hamilton superseded Basse as agent for the society the situation rapidly cleared. On May 25, 1700, Hamilton met the Council and produced instructions which ordered him to consult with them regarding the laying out of lands. The society now claimed only twenty proprietries. The council at once recognized the right of the agent to a seat, and forthwith elected him as president.<sup>2</sup> At the next meeting the council declared null and void all surveys made by Barkstead and John Jewell in virtue of a commission from the society during the administration of Basse. This action was approved by the governor as agent.<sup>3</sup> Harmony between the leading proprietors in the province and in England was thus for the time being secured.

Matters such as these were of course of a serious nature for those concerned. As compared with the savage conflicts in which the East Jersey proprietorship was involved, however, they were trivial.

During the closing years of proprietary rule the West Jersey Council was busy in perfecting the arrangements for a large new Indian purchase above the Falls of the Delaware. This was to be the basis for a third dividend of the land of the province. The dividend was not actually accomplished, however, until after the Jerseys had come under royal control.<sup>4</sup>

<sup>1</sup> *Minutes of the Council of Proprietors of West Jersey*, p. 93.

<sup>2</sup> *Ibid.*, pp. 99-100.

<sup>3</sup> *Ibid.*, p. 103.



## CHAPTER VII

### POLITICAL CONDITIONS IN WEST JERSEY UNDER THE PROPRIETORS

THE political system of West Jersey under the proprietors must have special interest, inasmuch as it was the first attempt of the Society of Friends to carry out in practice those political ideals which they derived from their peculiar religious doctrines. Here, rather than in Pennsylvania, are seen the applications of the teachings of Fox, unmixed with the ideas of feudal proprietorship.

The form of government elaborated by the Quaker owners of West Jersey appeared, as we have seen, in the Concessions and Agreements of 1676-7.<sup>1</sup> Whatever arrangements existed before that time were temporary makeshifts only. We cannot now say definitely how the Concessions and Agreements were prepared, but the biographers of Penn have always claimed for him their practical authorship, and the claim is inherently probable. The later conduct of Edward Byllinge certainly seems to preclude the possibility of his having any leading share in drawing up the Concessions and Agreements.

The Concessions and Agreements are a lengthy document, but are taken up for the most part by provisions regarding land and guarantees of private rights. The latter clauses have much political significance. It was declared that the Concessions and Agreements were to be the fundamental law of the colony, and that whosoever moved any

<sup>1</sup> *New Jersey Archives*, vol. i, p. 241.

change in their principles should be proceeded against as a traitor. Their provisions were to be "recorded in a fair table in the assembly house," and also in every hall of justice, where they were to be read solemnly to the people four times a year. It was laid down as the first fundamental that there should be freedom of conscience. Then trial by jury was guaranteed, followed by provisions to ensure fair trials. Imprisonment for debt was abolished, if the debtor had no means to pay, and there were other similar guarantees against oppression.

The clauses concerning government itself come at the end of the Concessions, but are of a striking character. Practically absolute power was put into the hands of the general assembly, which was to consist of one hundred persons, to be elected annually by the proprietors, freeholders and inhabitants, not "by the common and confused way of cry's and voices, but by putting Balls into Balloting Boxes." One representative was to be chosen for each of the one hundred proprietries, and no qualification was required except free-hold. The members of the assembly were to receive instructions from those electing them, and were to be bound to act in accordance therewith. They were to receive one shilling per day during sessions as remuneration, but this was likewise to be paid by their electors. There was to be absolute freedom of speech in the assembly, and all votes were to be public. The assembly was to pass all laws for the province, to establish courts and jurisdictions, and to levy taxes. It was also to elect ten "Commissioners of Estate," who were to conduct the affairs of

is true that many of them expected to remove to West Jersey themselves, and thus might enjoy the benefits of the Concessions and Agreements. It must also be remembered that since no lands could be granted to any person not vouched for by a proprietor, it was almost certain that the inhabitants of the colony would be in close accord with the views of the Friends. Still there was nothing to give the proprietors a controlling influence except their position as the largest land-owners. Although the land system of West Jersey was proprietary, the effect of the Concessions and Agreements, if executed, would have been to make the colony in its government practically a corporate colony, standing in much the same relation to the home government as Plymouth or New Haven before their absorption by their larger neighbors. But West Jersey would have been a real democracy without the limited franchise of the boasted New England "republics."

Through no fault of the proprietors, however, their system was not destined to be thoroughly tested. During the first few years after the settlement of Burlington no assembly was called, doubtless because no need for one was felt, and the affairs of the colony were managed by the commissioners originally named by the proprietors. Meanwhile their powers to establish a government had been called into question by James of York and Governor Andros,<sup>1</sup> and only the influence of Penn prevented the loss of that right. After much negotiation, James was obliged, as we shall see, to give up his claims to both the soil and government of West Jersey. But while he formally made over the soil to Byllinge and his trustees, he gave up his claims to government to Edward Byllinge alone.<sup>2</sup> Byllinge

<sup>1</sup>Smith, *New Jersey*, pp. 93-4.

<sup>2</sup>*New Jersey Archives*, vol. i, p. 332.

had signed the Concessions and Agreements with the other proprietors; but now, eager to assert his new-found authority, he disregarded what he had done and commissioned Samuel Jennings as governor of West Jersey.<sup>1</sup> To take such a step was of course to admit that James had previously held the power of government, but this obvious fact had no effect upon Byllinge. The other proprietors appear to have been unwilling to bring the matter again to an issue, and therefore avoided it by electing Byllinge as governor of West Jersey.<sup>1</sup>

Samuel Jennings, who had accepted the commission tentatively to prevent possible disorder,<sup>2</sup> on November 21, 1681, called the first assembly held in the province. This body proceeded to lay again the foundations of government by the passage of "certain fundamentals." <sup>3</sup> It was laid down that there was to be a free assembly every year, that the governor should not suspend or defer the signing of acts passed by the assembly, nor should the governor make war or raise any military force in the colony without consent of the representatives. The governor and council, which body now appears for the first time, were strictly forbidden to pass any laws or ordinances without the assembly, nor were they to prorogue or dissolve the assembly without its own consent. Further, the governor and council were not to levy taxes, and all officers of state or trust were to be appointed by and be accountable to the assembly. No treaty or alliance was to be made without the assembly, and no assembly was to grant any tax or custom for more than one year. Liberty of conscience was to be the right of all who

<sup>1</sup> Smith, *op. cit.*, p. 126.

<sup>2</sup> Jennings, *Truth Rescued from Forgery and Falsehood*, etc., (reprint, Philadelphia, 1880), p. 47.

<sup>3</sup> Smith, *op. cit.*, pp. 126-128.

lived peaceably, and there was to be no religious test for office.

Most of these matters had been covered by the Concessions and Agreements, and it is hard therefore to account for the conduct of the representatives in thus repassing them. It appears to have been considered, however, that a change in the constitution of the colony was being made, and that the consent of the inhabitants was necessary to give it validity, for it is stated that upon the acceptance and performance of these new fundamentals by Jennings he will be received by the assembly, proprietors and freeholders of West Jersey as their governor.<sup>1</sup> Such an idea was good Quakerism, but hardly good law. What would have resulted in case of the rejection of Jennings by the people can only be surmised, for the governor promptly signed the articles, and everything ran smoothly. The province was certainly much in need of legislation, for this first assembly passed no less than thirty-six acts. A number of these were repetitions of clauses of the Concessions. There were also acts further defining the duties of the governor and other officers.<sup>2</sup>

The assembly met again on April 1, but adjourned to the 14th, and then agreed to dissolve.<sup>3</sup> A new assembly came together on May 2d, and chose Thomas Olive as speaker.<sup>4</sup> Some important business was transacted, the act of most account being the division of the province into two judicial districts.<sup>5</sup> This was the beginning of the overthrow of the system of tenths as administrative divisions. The council, commissioners and other officers were also elected in due form. With considerable regularity other

<sup>1</sup> Smith, *op. cit.*, p. 129.

sessions of the assembly followed, and additional measures of importance were passed.<sup>1</sup> It was decreed that the governor could not require the presence of the assembly or of any of its members anywhere without the consent of the house.<sup>2</sup> For the dispatch of business it was ordered that the governor and council should have the privilege of preparing bills for laws, which should be promulgated twenty days before the meeting of the assembly. The governor, council and assembly together were to constitute the general assembly, and a plurality of their votes was to decide all matters, the governor having a double vote.<sup>3</sup>

But the question as to where the legal right to govern the colony belonged had not been definitely settled. It becomes apparent that for some reason a breach had come to exist between Byllinge and the other proprietors, and this tended to widen. Byllinge, to enforce his claim to the government, had decided to remove Jennings, who had given great satisfaction to the people, from the governorship.<sup>4</sup> Under these circumstances Penn advised the people of West Jersey to confirm the power of Jennings, and thus bring the matter to an issue.<sup>5</sup> Accordingly, in the "third month," 1683, the assembly drew up a bold set of resolutions declaring that the land and government of West Jersey had originally been purchased together, that the Concessions and Agreements were still the law of the land, and that the assembly would stand by them. It was further decided that application be made to Byllinge personally to confirm his first agreement by signing and sealing a document to that effect which

was to be transmitted to him. Jennings, upon promising to conform to the law and to the Concessions and Agreements, was again formally elected governor.<sup>1</sup>

The assembly had taken a bold stand, and in its two following sessions passed other resolutions and acts looking to the maintenance of its position.<sup>2</sup> Finally, in 1684, Jennings and Thomas Budd were dispatched to England to negotiate directly with Byllinge,<sup>3</sup> and Thomas Olive was chosen governor in place of Jennings. But the mission of Jennings and Budd failed completely. According to the account of Jennings, Byllinge greeted the agents with threats, but could not move them until certain prominent Friends proposed that the matter be arbitrated. The agents replied that they had no authority to take such a step, but when it was urged that they might act on their own account, Budd closed with the proposition, and Jennings then reluctantly yielded.<sup>4</sup> Among those chosen to make the award was George Fox himself. The purport of the decision seems to have been that Byllinge was legally entitled to the government of West Jersey because of the Duke's conveyance, and could not legally sell or divide it among the proprietors. Still, as he had undoubtedly given the other proprietors reason to believe that they should share in the government, he ought to confirm the Concessions and otherwise secure the colonists from oppression.<sup>5</sup> This

<sup>1</sup> Leaming and Spicer, *op. cit.*, pp. 468-472.

<sup>2</sup> *Ibid.*, pp. 480, 483-4.

<sup>3</sup> *Ibid.*, pp. 485-7.

<sup>4</sup> Jennings, *Truth Rescued from Forgery and Falsehood*.

<sup>5</sup> What purports to be the award is given in a pamphlet entitled, "The Case Put and Decided by George Fox. . . and other the most Ancient and Eminent Quakers between Edward Bylling on the one part and

award seems to have settled the matter, though Jennings never gave up his opinion that the land and government of West Jersey had been purchased together from Lord Berkeley.

Byllinge had previously named William Welch as deputy governor, and obedience had been refused by the colony. He now sent a fresh commission to John Skene as his deputy-governor.<sup>1</sup> It is stated, however, that Byllinge consented to grant a "new charter" to West Jersey, although it contained no new liberties. But nothing definite is known as to its nature.<sup>2</sup>

The assembly in September, 1685, decided to recognize Skene's commission, though with a reservation of their "just privileges and rights." Any further action was avoided by an adjournment owing to the "sharpness of the season."<sup>3</sup> This collapse of the opposition in West Jersey is in strong contrast to the measures of violence so often seen in the sister province. Thus ended government under the Concessions and Agreements, and their carefully drawn provisions for the liberty of the people remain no more than indications of the political ideal of the Friends. Instead of a practically self-governing republic, West Jersey now approximated the form of an ordinary proprietary province, though with an elective council.

But a curious condition of confusion followed the breakdown of the opposition to Byllinge. The assembly did not meet again till 1692,<sup>4</sup> and during most of the interval practically no general government seems to have existed. The only governmental power existing was exercised by the local governments and by the council of proprietors. Meanwhile occurred the death of Byllinge, who had removed to

<sup>1</sup> Smith, *op. cit.*, p. 190.

<sup>2</sup> Mulford, *op. cit.*, p. 246.

<sup>3</sup> Leaming and Spicer, *op. cit.*, p. 503.

<sup>4</sup> *Ibid.*, p. 507.



the province, and the purchase of all the interests of the deceased by the court physician, Dr. Daniel Coxe.<sup>1</sup> The latter was very desirous of exercising full jurisdiction over West Jersey, and on September 5th, 1687, wrote to the council of proprietors, stating that upon consultation with the highest legal authority he had been assured that, though the Concessions and Agreements might have been binding upon Byllinge, they in no way applied to himself. Further, he declared that his power of government was as absolute as that of Penn over Pennsylvania, that he had assumed the title of governor, and would exercise its duties with diligence. Coxe was willing to confirm all civil privileges granted by the Concessions and Agreements, but, as the government of England was universally esteemed the best in form, he intended to establish a system in the colony modeled after it.<sup>2</sup>

But before Coxe could carry out his ambitious schemes a stronger hand than his had seized control of colonial affairs, and West Jersey was added to King James' great province of New England with Sir Edmund Andros at its head. The colony, however, was little troubled by the presence of the viceroy, and the local authorities continued to manage their own affairs in peace. After the rule of Andros, the control of the province went back once more to its proprietors. But Coxe, disappointed by the opposition offered to his plans, had meanwhile sold out all but a small portion of his interests to the West Jersey Society, and in that body, therefore, according to the logic of events, rested the governmental power. The society was itself interested to the extent of two and a half proprietries in the affairs of East

Jersey, and it naturally felt how beneficial the union of the two provinces under the same governor would be. Therefore, Andrew Hamilton, already chosen governor of East Jersey, was commissioned for West Jersey<sup>1</sup> as well, and the government by a governor, council and assembly was once more established.

Col. Hamilton was occupied largely with the troublesome affairs of East Jersey, however, and not much was done in the sister province. When Hamilton was superseded by Basse in East Jersey, the same change took place in West Jersey,<sup>2</sup> and in the latter province, as the former, Hamilton was restored in 1699. Factional spirit undoubtedly ran high in West Jersey between the supporters of Basse and Hamilton. As was shown in the last chapter, the contest also involved the interests of the West Jersey Society, as represented by Basse, as against those of the council of proprietors. The followers of Basse were strongly opposed to the Society of Friends, and indeed made efforts to represent the contest as one between "Christians" and Quakers. Among the proprietors Jennings was undoubtedly the strongest leader, while prominent among the Bassites were John Tatham, Thomas Revell and Daniel Leeds.<sup>3</sup> But though feeling was bitter, there were no great disorders like the disturbances of 1699 in East Jersey.

But the determination of the Crown to assume control of East Jersey naturally led to a similar decision regarding West Jersey. The two provinces were too closely united geographically to permit the maintenance of a separate

<sup>1</sup> *New Jersey Archives*, vol. ii, p. 87.

proprietary government, with its greater laxity and lesser burdens in one of them, while the other was subject to royal government. Hence the proprietors of West Jersey were forced to include themselves in the surrender of 1702, and the Quaker province of "New West Jersey" came to an end.

## CHAPTER VIII

### RELATIONS WITH THE DUKE OF YORK AND THE CROWN

THE study of the relations existing between the various proprietors of New Jersey, on the one hand, and James of York and the British Crown, on the other, is one of the most interesting topics connected with early New Jersey history. Unfortunately we have here time for only the briefest sketch of those events which tended to bring an end to the proprietary control of the colony.

From the very beginning there was doubt as to the right of the proprietors of New Jersey to institute a separate government over their possessions, and it seems now reasonably certain that no governmental power was legally conveyed by the Duke of York to Berkeley and Carteret. The claim of Berkeley and Carteret is indeed plausible, as the Duke held the most full governmental control over his American possessions, and as the province was made over to them "in as full and ample a manner" as he himself possessed it. But such argument, nevertheless, is not well founded in law. In the release to Berkeley and Carteret New Jersey is clearly defined as "a tract of land." The way in which the Duke held it is then said to be free and common socage, with a rent of forty beaver skins annu-

is not reasonable to suppose that such a grant of governmental power as was claimed could have been conveyed in general terms such as these. Government was surely not an incident of the tenure, and, moreover, this is exactly the wording which was commonly used at the time in transfers of real estate. Nowhere else is there any mention of government. It is true that the power of government was not expressly reserved, but most assuredly it was not conveyed to Berkeley and Carteret, and therefore must remain with the Duke.

Even if the Duke had intended to convey the right of government, it is doubtful if he had the power to do so. The right to institute government was, according to English law, a prerogative right inherent in the Crown which could only be conveyed to others than the king by his express grant and patent. This was the principle which had held from the time of the quo-warrantos of Edward I, and though it may have been disregarded in some cases, it was nevertheless accepted in theory. The release of New Jersey was merely a private transaction between James and Berkeley and Carteret, and the king had borne no part in it. In such a transaction a prerogative right could scarcely be conveyed. The case of New Hampshire shows that this was a real difficulty, for the claims of Mason and his heirs to governmental control had there to be given up for lack of the royal sanction. It is barely possible that, as the power of government was originally given to James, his "heirs and assigns," it might have been held that sanction was thus given to alienation on the part of James, for Berkeley and Carteret were of course his assigns. But this is doubtful, as "heirs and assigns" was merely a customary phrase, and would scarcely conceal so great a power.

It therefore appears that James, in denying the right of the proprietors to institute a separate government at Eliza-

bethtown, was not acting the part of an unprincipled tyrant,<sup>1</sup> but was merely, in a very cautious and moderate manner, enforcing his just authority. It seems apparent, however, that James did not at first understand the true bearings of the case. Berkeley and Carteret, on their part, never seem to have had a doubt as to their power; but by the issue of their Concessions and the dispatching of Philip Carteret to Elizabethtown, made the province of New Jersey an accomplished fact before any measures of prevention could be worked out.

The disadvantages of having two governments upon one harbor were, however, soon made apparent to James by Nicolls and Samuel Maverick.<sup>2</sup> It may seem now rather strange that James did not therefore at once take advantage of the fact that governmental power was not conveyed in the deeds of lease and release to suppress the government of New Jersey. It is very evident, however, that he did not wish to offend Berkeley and Carteret. Probably, also, it was unsafe to do so, for we must remember that James was playing for high and doubtful stakes in England. He therefore preferred to wait for some favorable opportunity to make good his rights without prejudice to his political interests. This was good policy, but it apparently puts him in the wrong by making him seem to acquiesce in the acts of Berkeley and Carteret.

New Jersey continued undisturbed till the Dutch reconquest. But this reconquest had, according to the theory of the English law, much the same effect upon the powers of

veyed to James, the grant included the old sweeping powers of jurisdiction. Meanwhile Berkeley had sold his interests in land and government alike to ~~the~~ Friends, Byllinge and Fenwick. Carteret, however, as we have seen, set out at once to obtain a renewal of his old grant, and was able to bring such influence to bear upon James that he was forced into a reconveyance of a part of the former province to the old Cavalier. But this new conveyance, like the old one, described New Jersey simply as "a tract of land," and made no mention of jurisdiction.<sup>1</sup> At the same time experience must have shown how Carteret understood such a grant, and there seems no excuse for James or those who acted for him in not having the ambiguity cleared away.

Meanwhile Andros had been commissioned as governor of New York and the Duke's other possessions. His commission, of course, covered New Jersey.<sup>2</sup> But there is evidence that he received side instructions to "keep all things in the same posture (as to the Duke's prerogatives and profits) as they were in your predecessor's time."<sup>3</sup> He therefore did not interfere with the reestablishment of Carteret's government. But Andros insisted upon the right of the Duke's government to levy customs on vessels entering New Jersey. As Philip Carteret resisted, much trouble and irritation were caused.<sup>4</sup> With such half-way measures James was obliged to content himself for the time, as he dared not offend Sir George as things then stood. His secretary nevertheless wrote to Andros, "should his

<sup>1</sup> *New Jersey Archives*, vol. i, pp. 161-167.

<sup>2</sup> *New York Colonial Documents*, vol. iii, p. 215.

<sup>3</sup> *New Jersey Archives*, vol. i, p. 179; *New York Colonial Documents*,  
...

(Carteret's) foot chance to slip those who succeed him must be content with less civility."<sup>1</sup>

But the Quaker proprietors of West Jersey were not in the same position as Sir George, nor, indeed, did they have the claim to jurisdiction which arose from the regrant of New Jersey to the latter after the Dutch reoccupation. It seems strange that they should have even expected any recognition of their rights on the part of Andros. They certainly received nothing but the most straightforward treatment at his hands. Fenwick, as we saw, came first and established himself at Salem, and resisted the duty which the Duke's garrison at Newcastle levied on all goods passing up the Delaware. He was therefore promptly arrested, sent to New York, tried and imprisoned upon refusing to give security for good behavior. Being released, however, he returned to Salem and once more proceeded to institute a government. He was then once more seized, and six commissioners were appointed to act at Salem subject to the Duke's court at Newcastle.<sup>2</sup> Thus the question of jurisdiction over Salem was effectually settled in favor of Andros.

Byllinge and his trustees met less violent but still similar treatment. When the commissioners sent over with their first expedition reached America, they found it advisable to visit Andros at New York, and were met by him with a flat refusal to recognize the claims of the Quakers to govern West Jersey.<sup>3</sup> This nearly led to the failure of the expedition, but eventually the commissioners were allowed to take out warrants as subordinates of Andros,<sup>4</sup> and upon this

<sup>1</sup> Whitehead, *East Jersey under the Proprietors*, p. 302 (note M).

<sup>2</sup> *New Jersey Archives*, vol. i, pp. 186-204, 235-239, 278-285.

<sup>3</sup> Smith, *New Jersey*, pp. 93-4.

<sup>4</sup> *New Jersey Archives*, vol. i, p. 291.



basis the settlement of Burlington was made. It was understood that the arrangement was to last until further advice could be had from England. Andros meanwhile enforced very rigidly the right to levy customs upon the Delaware, and, as West Jersey became more populous, this burden caused continued complaint.<sup>1</sup> The whole Quaker enterprise was in the greatest peril, for in spite of the friendship between Penn and the Stuarts, there could be no ensured asylum for Friends under the direct authority of the Crown of England.

Led by Penn, the proprietors therefore at once addressed themselves to the Duke. But before anything could be settled came a change in the affairs of East Jersey. On January 14, 1679, Sir George Carteret died, and Andros, who probably had received private instructions to that effect, soon afterward commanded Governor Philip Carteret to cease exercising any jurisdiction over the Duke's dominions unless he could show warrant. Carteret replied boldly, asserting his rights and declaring that he would defend them.<sup>2</sup> Andros soon afterward journeyed to Elizabethtown to assert his authority. Carteret, however, raised 150 men, and though Andros was kindly received, he could accomplish nothing.<sup>3</sup> But directly afterward Carteret was violently seized by a secret force sent from New York, conveyed there and imprisoned, awaiting trial. In spite of the efforts of Andros to browbeat the court, he was finally declared innocent of offense,<sup>4</sup> but was obliged to give security not to exercise authority in New Jersey till affairs

<sup>1</sup> Smith, *op. cit.*, p. 116; *New Jersey Archives*, vol. i, p. 291.

<sup>2</sup> *New Jersey Archives*, vol. i, pp. 294, 297.

<sup>3</sup> *Ibid.*, vol. i. nn. 200-202. 314-5.

were settled in England. Andros now appeared before the assembly of East Jersey, and asked that it adopt the laws then in force in New York. But the deputies refused compliance, declaring that not the king's letters patent, but *Magna Charta* was their rule and safety. They, however, presented their existing laws to Andros, who apparently did not object to them. Having appointed certain local officers, he then returned to New York.<sup>1</sup>

Thus the authority of the Duke had been asserted over the entire province of New Jersey. But the matter was not yet closed, for in England Penn was managing the Quakers' case with skill. Fortune, too, favored him, for this was just the time when James, threatened by the Exclusion Bill, was forced to retire to Scotland to avoid the outcry against him. He could ill afford to make more enemies, especially of such men as William Penn. The Duke was, indeed, only anxious to escape from all extra embarrassment, and eventually ordered counsel to hear and make report of the case. Penn and his confederates presented such legal arguments as they were able, but put most stress upon the political side of the controversy. The levying of taxes upon the people of West Jersey without their consent was, they said, an abridgment of the rights of Englishmen. Here was the great opportunity for the Duke "to free the country with his own hand," and thus to show to the world that he was the friend rather than the opponent of free government.<sup>2</sup>

Such agreements meant little to James, but his situation was such that he dared not seem to resist them. As the only way out of the difficulty, he agreed to submit the whole

attorney-general, but now one of his greatest opponents. After considering the matter, Sir William naturally decided against the Duke, both as to his right of government and as to his claim to levy customs, chiefly because jurisdiction had not been expressly reserved in the Grant of 1664 to Berkeley and Carteret.<sup>1</sup> This was curious legal reasoning, but it was sufficient. James could no longer hold out, and forthwith, without even waiting for the advice of his own counsel, executed a deed making over both government and land to the Quakers.<sup>2</sup> But curiously enough, while the land was made over to Byllinge and his trustees, the power of government was given to Byllinge alone. No adequate reason is known for this step. It may possibly have been done through carelessness. But that it had important consequences in West Jersey we have already seen.

Having thus surrendered his claims to control of West Jersey, James could not deny the demands made upon him with far more reason by Lady Elizabeth Carteret, the executrix of Sir George, to desist from his suppression of the government of East Jersey. Accordingly, James signed another instrument giving up all claim to that province as well.<sup>3</sup> A little later also, after the sale of East Jersey to the Twenty-four, James executed a similar document conferring the government and land directly upon the new proprietors.<sup>4</sup> This ignored altogether the grant to Lady Elizabeth, and was unnecessary. But the Twenty-four, doubtless felt that it was safer to receive the power directly from the Duke.<sup>5</sup>

Thus the claims of the several proprietors of New Jersey,

<sup>1</sup> *New Jersey Archives*, vol. i, pp. 323-4.

<sup>2</sup> *Ibid.*, vol. i, p. 324.

however faulty they may originally have been, were apparently made good. It is true that the old principle that jurisdiction could not be alienated by a mesne lord without the royal sanction, still rendered the transfer of doubtful legality. But there is no evidence that James intended to take advantage of such a technicality. However, the danger to the proprietors was by no means passed. James was playing for the throne of England, and once seated upon it he would be in a position to brush aside anything that stood in the way of his interests. He now understood the disadvantages of the existence of the Jerseys as proprietary governments, and might be relied upon to override whatever prevented their overthrow.

But temporarily there was an end of serious trouble. Brockholst, who was serving at New York in the absence of Andros, hesitated to permit the resumption of Carteret's government even after the facts of the Duke's release were known.<sup>1</sup> He did not, nevertheless, interfere by force, and Carteret once more assumed control. But the greater freedom of the government of the Jerseys continued to cause discontent among the people of New York, and their greater commercial freedom was a menace to the prosperity of James' colony. This was especially true after the Twenty-four undertook to establish at Perth Amboy a free port which should rival and surpass New York. This danger was clearly seen by Dongan, James' new governor, who not only warned his superiors directly,<sup>2</sup> but later persuaded the authorities of New York City to draw up a memorial praying that the Jerseys be reunited to New York.<sup>3</sup> Arousal

wrote to Dongan directly, remonstrating with him upon his course.<sup>1</sup> But Dongan in reply declared that he was in duty bound to represent the truth to his master.<sup>2</sup> He continued, whenever he touched upon the subject, to inform his superiors of the disadvantages arising from East Jersey.<sup>3</sup>

The Twenty-four adopted a conciliatory course. Governor Lawrie was instructed to do all he could to promote harmony, and especially to discourage the removal of settlers from New York to New Jersey.<sup>4</sup> Lawrie faithfully followed his instructions, allowing William Dyre, the collector of customs at New York, to discharge his office also over East Jersey.<sup>5</sup> But it was by this very concession that the proprietors overreached themselves, for the turbulent population of East Jersey was little inclined to submit to the charges of the hated customs officer. Soon Dyre was driven to complain to the Commissioners of Customs at London that he was absolutely unable to carry out his orders in East Jersey, for "when he prosecuted vessels, the juries found their verdicts against the most undoubted facts." \*

These complaints arrived in London just at the right time. James Stuart was now on the throne. Monmouth and Argyle had been crushed, and the king was free to apply to the colonies that plan of centralization which he had so long cherished. He was already involved in his controversy with New England, and the smuggling of East Jersey was a good pretext to include that province also in his schemes. Accordingly, the Committee of Plantations

<sup>1</sup> *New Jersey Archives*, vol. i, p. 463.

<sup>2</sup> *New York Colonial Documents*, vol. iii, p. 353.

<sup>3</sup> *Ibid.*, vol. iii, pp. 356, 392.

<sup>4</sup> *New Jersey Archives*, vol. i, p. 426.

<sup>5</sup> *Ibid.*, vol. xiii, p. 142.

\* Whitehead, *East Jersey under the Proprietors*, p. 143.

recommended that *quo warranto* proceedings be instituted against East Jersey, West Jersey and Delaware, on the ground that it was for divers reasons prejudicial "that such independent governments be kept up and maintained without a nearer and more immediate dependence on your Majesty."<sup>1</sup> West Jersey was nearly innocent of offense, but it was a good opportunity to attack all three colonies at once. James was, of course, very ready to accept the recommendations of the Plantation Committee, and when he ordered Sir Robert Sawyer, his Attorney General, to introduce *quo warranto* proceedings against Rhode Island and Connecticut, he gave him additional charge to include both East and West Jersey if he thought it necessary. Nothing, however, was done at once. But eventually, in May, 1687, James ordered that the *quo warrantos* be pushed, especially against New Jersey, Maryland and the Carolinas.

The proprietors of East Jersey made such resistance as they could. They presented a petition complaining of the encroachments of New York, setting forth the expense they had been at without return, and arguing that East Jersey should not be held responsible for customs laws instituted at New York. They asked the king, if he thought a change necessary, to appoint one of the proprietors governor of both East and West Jersey, and finally requested a special customs collector for Perth Amboy.<sup>2</sup> But, though the last request was granted,<sup>3</sup> nothing else was gained. Meanwhile Andros had been knighted, and sent over as governor of New England. It became evident that resist-

ernment, with the stipulation that their rights to land be respected. The surrender was therefore promptly effected, April, 1688. The owners of West Jersey, whose case was exactly similar, joined in the transaction, and the *quo warranto* proceedings were of course discontinued. Andros was commissioned governor of the new royal province,<sup>1</sup> and in August he visited the Jerseys and took over the governments. There was no demonstration of any kind, and at least a part of the people seemed well content with the change.

The brief rule of Andros offers little of significance. He was personally engaged elsewhere, and though Andrew Hamilton continued to rule East Jersey several months as his subordinate, the province was eventually left to the care of its local governments.<sup>2</sup> Upon the overthrow of Andros there was no disturbance, despite the proximity of East Jersey to New York, and the inhabitants appear to have been entirely willing to remain in *statu quo*.

As the governmental powers of the proprietors had not been destroyed by the *quo warrantos* of James, the revolution led, as we have seen, to a resumption of the proprietary governments. The resumption was naturally followed for a time by the cessation of those difficulties with the crown which had formed such important incidents in New Jersey history. William was far less interested in these colonies than James, and knew far less about their affairs. This condition could not, however, endure long. In 1694 the assembly of East Jersey authorized the establishment of a customs house at Perth Amboy, and required all vessels

coming to East Jersey to enter there first.<sup>1</sup> The exportation of pipe-staves, shingles and plank, except to "places beyond the sea," was also forbidden. Governor Fletcher grumbled at these measures,<sup>2</sup> and continued to force vessels coming to New Jersey to pay New York customs.<sup>3</sup>

Under Bellomont, however, the old vexatious customs question was reopened in earnest.<sup>4</sup> The proprietors of East Jersey had meanwhile obtained further legal opinion that no duties could be levied upon them,<sup>5</sup> and forthwith presented petitions to the Lords Commissioners of the Treasury, the Lords Justices, and the Lords of Trade,<sup>6</sup> asking that their right to free ports be established. In these representations some of the proprietors of West Jersey joined. But the law officers of the crown, when consulted, held that the Duke of York had himself never held the right of appointing ports, and hence could not convey it to Berkeley and Carteret.<sup>7</sup> On February 23, 1698, Bellomont therefore received an order from the Crown commanding him to enforce the rights of New York.<sup>8</sup> Governor Basse violently resisted this attack,<sup>9</sup> and proceeded to put a cargo into the sloop "Hester," then lying at Perth Amboy, a craft of which he was part owner. But Bellomont, sending a force, seized the vessel, and as Basse refused to pay duty,<sup>10</sup> she was condemned. The East Jersey assembly supported Basse by an appropriation,<sup>11</sup> and

<sup>1</sup> Leaming and Spicer, *Grants and Concessions*, pp. 342, 343.

<sup>2</sup> *New York Colonial Documents*, vol. iv, p. 114.

<sup>3</sup> *New Jersey Archives*, vol. ii, p. 132.

<sup>4</sup> *Ibid.* vol. ii, p. 227.      <sup>5</sup> *Ibid.* vol. ii, p. 136.



legal proceedings were begun which, as usual, spun out over several years. But at length the Court of King's Bench gave definite decision in favor of Basse. He was awarded ample damages, and the right of the Jerseys to free ports was at length assured.<sup>1</sup>

The issue was too late, however, to be of much benefit. There had been long-continued complaints against the Jerseys, with other proprietary jurisdictions, as centers of illegal trade and harborers of pirates.<sup>2</sup> The disorders arising out of the quit-rent troubles had now reduced the proprietors' government to impotence and contempt, and the Crown, as a matter of vital necessity, had already determined to bring their rights to a trial.<sup>3</sup> William's lawyers in their advice had brought prominently forward the argument that powers of government could not be conveyed by a mesne lord without the royal sanction, and there is no doubt that their ground was well taken. But only a few of the proprietors wished to resist. The majority, led by the West Jersey Society and Lewis Morris, who visited England for the purpose of carrying the matter through, wished only to secure a definite guarantee of their right to the soil and such other privileges as could be obtained. They saw that the government of East Jersey was beyond their power, and that conditional surrender was the best course. From July, 1699, to April, 1702, the negotiations were continued, but at length the proprietors of the two Jerseys, convinced that their rights would be respected, were induced to waive their claims and consent to an unconditional surrender of governmental

power. With such dispatch as the clumsy nature of the proprietorship admitted, the necessary forms were carried out. Thus the inevitable result was at length worked out, and New Jersey was at last a Royal Province.

<sup>1</sup> *New Jersey Archives*, vol. ii, p. 100.

<sup>2</sup> *Ibid.*, vol. ii, pp. 404, 412, 415.      <sup>3</sup> *Ibid.*, vol. ii, pp. 452, 461.

## CHAPTER IX

### THE ROYAL GOVERNORS

DURING the negotiations which led to the surrender of the government of the Jerseys to the crown, the major part of the proprietors made an effort to have Andrew Hamilton, who had struggled so efficiently in their cause, commissioned as royal governor.<sup>1</sup> The appointment was, however, actively opposed by William Dockwra, Peter Sonmans, and the minority interest.<sup>2</sup> In this opposition they were supported by Edward Randolph, Surveyor General of the Customs, and by Col. Robert Quarry,<sup>3</sup> and the Lords of Trade eventually recommended that some one unconnected with the divisions and disorders of the province should be appointed.<sup>4</sup> Accordingly, Edward, Lord Cornbury, who had already been commissioned as governor of New York, was named as the first royal governor of the united province of New Jersey.<sup>5</sup> This practice of appointing the same person governor of New York and the Jerseys was continued until 1738, and whatever its other results, it certainly placed New Jersey under the oversight of men of more prominence and reputation than could otherwise have been the case.

<sup>1</sup> *New Jersey Archives*, vol. ii, pp. 408, 469, 475.

<sup>2</sup> *Ibid.*, vol. ii, pp. 430, 432, 466, 470.

<sup>3</sup> *Ibid.*, vol. ii, pp. 479, 481.

<sup>4</sup> *Ibid.*, vol. ii, p. 484.

But though the reasons for the rejection of the able and experienced Hamilton were well grounded, the new appointment proved to be of such a nature as to reveal the very worst features of the English colonial system. Lord Cornbury was a nobleman of illustrious descent and the highest family connections. He was the grandson of the Earl of Clarendon, the great minister of Charles II, and thus the cousin of Queen Anne herself. But in almost every other quality needed for the office he was totally deficient, and the sole reason for his nomination appears to have been the strength of his family influence, together with the fact that he had ingratiated himself with the Whig government by being among the first officers of the royal army to desert James II in 1688.<sup>1</sup> According to the statement of an able and well-informed though strongly biased colonial historian, he had since that event distinguished himself chiefly by the extravagance of his living, which had run him so deeply into debt that he was forced to leave England to avoid his hungry creditors.<sup>2</sup>

Cornbury's career in America certainly lends color to these assertions, for not only did he fail utterly to show the smallest political sagacity, but he made it evident that his own pecuniary profit was the chief aim of his administration, and by stooping to the most ill-concealed bribery, forfeited the confidence of all but his companions in corruption. Even his zeal for the Church and his attempts to cloak his misconduct by appeals to militant patriotism fail to blind the investigator to the real character of the man.

Nor was his public life alone reprehensible, for the mad pranks of his private life contributed almost equally in arousing the contempt of his subjects.<sup>1</sup> His debts also continued to accumulate, so that when, after repeated complaints, he was at length removed from office he was at once arrested by the sheriff of New York upon the just demands of his creditors, and remained in prison until, upon the death of his father, he became Earl of Clarendon, and was thus enabled to return to England.<sup>2</sup> It would be too much to assert that the feeling of suspicion with which the inhabitants of New Jersey undeniably regarded their royal governors was based upon the unfortunate conduct of Cornbury, but there is abundant evidence that the feeling of distrust was greatly intensified by the career of New Jersey's first royal executive.<sup>3</sup>

Cornbury's successor, John, Lord Lovelace, though also a member of the nobility, was apparently a man of quite different stamp. His early death, however, prevented him from making any deep impression upon the colony. He was advanced to the governorship of New York and the Jerseys from the office of cornet in her majesty's Horse Guards, and was received in the Jerseys with every mark of respect. Lovelace certainly won the love of all with whom he came in contact during his brief administration, and left a favorable impression behind him, though this easy conquest was due partly, no, doubt, to the deep feeling of relief at the departure of Cornbury.<sup>4</sup>

Col. Richard Ingoldsby, however, who as lieutenant-governor ruled the colony during the period from the death of Lovelace to the commissioning of Hunter, revived the

feeling of distrust with which the governorship had been regarded under Cornbury. Ingoldsby was well known in the Jerseys, for he had been prominent in the affairs of New York since 1691. He is a good example of a class frequently to be met with in the colonial politics of the period. Born of good family in England, Ingoldsby appears first in New York as captain of a company of troops sent to the province at the time of Leisler's Rebellion. Owing to his position, he played a rather striking part during the Leislerian troubles, and indeed conducted the administration of New York for a short time after the death of Governor Sloughter.<sup>1</sup> But he incurred the hatred of the Leislerian party, and shared in the downfall of the Anti-Leislerian faction upon the appointment of Lord Bellomont as governor of New York. Bellomont showed his dislike of Ingoldsby plainly in his correspondence, terming him "a rash, indiscreet man," and declaring that he showed "unpardonable neglect" in absenting himself from his duty.<sup>2</sup> That Bellomont had grounds for his attitude is clear from the fact that Ingoldsby was endeavoring to have himself commissioned as Bellomont's successor in New York, and had made a journey to England for the purpose. Ingoldsby did not have sufficient influence, however, to secure his object. Instead of obtaining the governorship he was named as lieutenant-governor of New York under Cornbury, and later was given a similar commission for New Jersey.

By Cornbury he was regarded with suspicion, and on at least one occasion sharply reprimanded.<sup>3</sup> As a result his

dered revoked by the home authorities.<sup>1</sup> But there is no evidence that, even in his opposition to the detested Cornbury, Ingoldsby received any popular support or sympathy.<sup>2</sup> Upon the death of Lovelace, Ingoldsby assumed the executive office in New Jersey. Yet, though interest is given to his rule by the events which occurred in it, he gave no proof of ability or sympathy with the people of the colony, and apparently justified the assertion of Smith, that he was naturally "a heavy man."<sup>3</sup> In his measures he met opposition almost as violent as Cornbury himself, and there was the same feeling that he was seeking only his own interest rather than the welfare of the colony. Ingoldsby withdrew from New Jersey before the arrival of his successor, and probably returned to England. Nothing further is known of his career.<sup>4</sup>

But all the royal governors of New Jersey were not of the stamp of Cornbury and Ingoldsby. Few, if any, colonial governors equalled Robert Hunter in tact or political skill. Little is known of his early life except that he was of Scotch birth, and had at one time been apprenticed to an apothecary. But his correspondence clearly shows that he had either had a good education or else had improved his own powers with great ability. Changing his occupation, he entered the army, and by 1707 had risen to a colonelcy. In addition to other creditable service, he fought at Blenheim. Hunter appears meanwhile to have become well known in the leading English society of the day, and enjoyed the acquaintance of such men as Addison, Steele and Swift. Through the influence of Addison he had, as early

as 1705, been appointed lieutenant-governor of Virginia, but had the misfortune to be captured by the French while on his way to the province. After being detained for some time in Paris, he was at length released, and again, through the support of Addison, was commissioned governor of New York and New Jersey.<sup>1</sup>

From the very first the new governor made a favorable impression, and by his consummate ability succeeded in quieting the discontents which had done so much to destroy the prosperity of the Jerseys. Possessed of all the shrewdness and tact of his race, and actuated by a real desire to further the best interests of his provinces, Hunter found the colonists ready to repose confidence in him and listen to his wishes. Many of the leading men of the Jerseys became his close friends, as is shown by the correspondence which was kept up between them after he had withdrawn from the province.<sup>2</sup>

It is true that Hunter was not without some of the weaknesses of his nationality and time. "He had a ready art of procuring money, few loved it more." This is said to have led him into schemes, games, and considerable losses.<sup>3</sup> Whatever his faults may have been, however, they were not of a nature to interfere with his public usefulness. He possessed the engaging address of a gentleman, and was a churchman, though he did not place much stress upon conformity in others.

In 1720 Hunter, on account of his health, exchanged positions with William Burnet, son of the celebrated bishop, and



returned to England to fill the position in the customs which the latter had occupied. In 1727, however, he was appointed governor of Jamaica and returned to America. Yet he never again visited the Jerseys, and finally died in 1734. Hunter stands out as the best type of the colonial governor. If the home authorities had been wise enough to send many men of his calibre to America, the results would have been far-reaching.

His successor, William Burnet, although differing in many respects from Hunter, was also possessed of many of the qualities necessary for a successful governor. Great care had been spent by his father upon his early education, and his scholastic training had been supplemented by travel and association with distinguished men. Although it is said that in his youth he was rather slow intellectually, he appears later to have convinced himself, at least, that his scholarship was of a high order. At any rate his love for intellectual things was real, and much of his small income went for the purchase of rare and valuable books. As was not unnatural, he became especially interested in theology, and while acting as governor employed his spare time in writing a curious theological essay which was published anonymously in London. But though his own views of religion, as befitted the son of the great Bishop of Salisbury, were broad and tolerant, he was little inclined to tolerate those who did not agree with his opinions, and chose his friends from those who were in sympathy with his beliefs.

Burnet was large personally, and had frank manners and a dignified demeanor, which evidently enabled him to impress most of those whom he met. Yet, in spite of his scholarly qualities, he was gay and condescending. Moreover, he did not make that affectation of pomp which was a hindrance to so many governors, but mingled in colonial

society freely and in a friendly spirit. Burnet devoted himself especially to the ladies, and was much admired by them.<sup>1</sup>

Yet, in spite of his many good qualities, he was not at bottom the equal of the able man who preceded him. In tact, in knowledge of men, and in political skill Hunter was greatly his superior. He also differed in disposition and temperament from Hunter, and was unable to include within his circle of friends some prominent men who had been the sturdy supporters of the latter. Burnet never succeeded in keeping his own personality in the background while at the same time obtaining all his ends as Hunter had done, while that sterling good sense which had so characterized the other Scotchman was sometimes lacking to Burnet.

Burnet, however, had the advantage of the friendship and advice of Hunter, and was thus able to avoid some errors at the beginning of his administration.<sup>2</sup> He was, also, able to commence his work at a time when party strife had been to a great extent quieted. Upon the whole, his rule was successful, and he lost little of the ground which Hunter had gained. At last, owing to the opposition of certain commercial interests in New York, he was transferred to the governorship of Massachusetts, and thus passes from our field of study. His later career is familiar to all students of colonial history.

Burnet was succeeded by another Scotchman, John Montgomerie. Montgomerie had served in the army, but had become better known as a courtier, having acted as governor of the bedchamber of George I before he became king. His influence at court probably secured his appointment, as he

and peaceable disposition. He is remembered largely because of the amount of household equipment he brought with him to America to support his new dignity. On the whole, affairs moved quietly during his rule, but his work was cut short by death after he had been in the colony only a little over two years.<sup>1</sup>

The appointment of his successor was peculiar, as William Cosby, a naval officer, had already been governor of the island of Minorca, and had been charged with maladministration in office there.<sup>2</sup> During his short career in America he certainly displayed greed, lack of tact and even high-handed tyranny. Those qualities were shown by him, however, chiefly in his administration of New York.<sup>3</sup> New Jersey, though suspicious of his intentions, suffered little direct harm from him. His death came as a welcome relief to both colonies. Cosby was the last governor to rule both New Jersey and New York. Much to the delight of the smaller colony, she was at length granted a separate executive, and Lewis Morris, her own most prominent public man, received the commission.

Our brief survey of the character of the early royal governors of New Jersey shows clearly that the bitter conflicts between the executive and the legislature of the colony depended in a large degree upon the character and ability of the governors. When men of tact and fairmindedness, like Hunter and Burnet, held commissions, English control worked smoothly and satisfactorily. The lack of judgment displayed by the Board of Trade in sending men like Cornbury and Cosby to rule prosperous colonies, for reasons

## CHAPTER X

### LEGAL POSITION OF THE GOVERNOR AS EXECUTIVE

THE position of the royal governors of New Jersey during the Union Period did not in its legal aspects differ materially from that of the chief executives of other royal provinces. The commissions of the governors, published upon their entering on office, were in a certain sense the constitution of the province, for they were the only official written documents the binding force of which was generally recognized. The commission of Cornbury, by which royal government was first established, gave to that worthy gentleman the usual sweeping executive power. After stating briefly that the disorders of the province had led the proprietors to surrender their powers of government to the crown, it proclaimed Cornbury captain-general and governor-in-chief of both East and West Jersey. He was directed to rule according to his commission and instructions, and also according to such reasonable laws as should be made by him with the advice and consent of the council and assembly. After publishing his commission, he was to take the usual oaths, and was then to administer them to the lieutenant-governor and the members of the council. The sections immediately following, however, deal with the governor's relations with the council and assembly, and can be best considered in discussing the organization and work of these bodies. Cornbury was to keep the seal of the province and act as chancellor. Moreover, at his discretion, he could administer the oaths appointed by act of Parliament

to be taken instead of the oaths of allegiance and supremacy to all and every person residing in or passing through New Jersey.<sup>1</sup>

The sweeping power to establish all necessary courts to determine all cases, criminal and civil, in both law and equity, follows. Judges, commissioners of oyer and terminer, if necessary; justices of the peace, and such other officers as might be required for the better administration of justice and for putting the laws into execution, were likewise to be appointed by the governor. His wide control over the judicial system was increased by the power to reprieve until the royal pleasure was known, except in cases of treason and willful murder.<sup>2</sup>

In ecclesiastical affairs the governor was given the power to collate to benefices.<sup>3</sup>

But the commission, as usual, is more detailed and specific when the military side of the governor's work is taken up. Cornbury had the right to muster and command all inhabitants of the province, and to withstand all enemies both by land and sea. He could transport such forces into other provinces for defense, and could authorize pursuit of enemies either within or without the colony. He could execute martial law in time of insurrection or war and do all pertaining to the place of captain-general. Likewise he might erect fortifications and grant commissions to masters of ships to execute martial law at sea in time of war. But this power was not to extend in any way to the royal navy.<sup>4</sup>

Lastly, all moneys raised by any act were to be issued only on warrant from Cornbury, with the consent of the council. and were to be disposed of only for the support of

also given authority to appoint fairs, marts, and markets, as well as ports and harbors, but only by consent of his council.<sup>1</sup>

Such was the executive work of the governor as set forth in the commission of 1702. Subsequent commissions during the entire period of the union with New York merely repeated its provisions with some verbal modifications. As far as published authority from the British crown is concerned, no important change in the duties and position of the chief executive appears.

In examining the actual position of the governor, however, more weight attaches to the instructions given by the home government than to the sweeping general clauses of the commissions. In the detailed paragraphs of the various sets of instructions may be traced some changes in the ways in which the governors were expected to carry out their powers. It must be remembered, however, that the instructions represent only the ideas of the home government. They were absolutely binding, indeed, upon the royal appointees, but their binding force, while generally acquiesced in, was never admitted as absolute by all of the colonists. The instructions were moreover supposed to be secret. Lewis Morris, however, obtained a copy of Cornbury's articles, a fact very embarrassing to that worthy executive;<sup>2</sup> and throughout the period the nature of the commands given seems to have been often understood in a general way by the provincial leaders.<sup>3</sup>

The instructions given to Cornbury in 1702 consist of

<sup>1</sup> *New Jersey Archives*, vol. ii, p. 499.

<sup>2</sup> *Ibid.*, vol. iii, pp. 2, 74.

103 articles, dealing with the whole field of administration likely to need his attention and action. Most of the instructions are specific in character, and it is therefore rather difficult to formulate any general description of their provisions. Many of the articles deal with the work of the governor in legislation and in other fields, which we shall consider separately. We must, nevertheless, try to gain some idea of the character of those relating more specifically to administration.

In the first place the instructions directed Cornbury to carry out the provisions of his commission. For the better so doing he was to impart to his council so many of the instructions wherein their advice and consent were needed, and also as many more as he might deem advantageous. In all things Cornbury was to avoid sharing in the parties of the province, and was to use impartiality and moderation. All officers appointed by him were to be of good life and well affected to the government.<sup>1</sup> Cornbury himself was forbidden to come to Europe without special permission from the crown, and, if he absented himself from New York and New Jersey, one "full moiety" of the salary and emoluments of his post were to go to the person left in charge.<sup>2</sup>

After the articles relative to his more strictly legislative work came the instructions regarding the governor's financial powers. He was not to permit the levying of any money for which there was not to be accountability to the treasury department in England. Full books were to be kept of all accounts, and these were to be sent, attested under oath, every half year to the lord high treasurer or the commissioners of the treasury and to the board of trade. Every sum disposed of was to be specified. No money was

<sup>1</sup> *New Jersey Archives*, vol. ii, pp. 508-9.

<sup>2</sup> *Ibid.*, vol. ii, p. 514.

to be paid out except by the governor's warrant on advice of the council, but the assembly were to have the right to examine all accounts of expenditures disposed of under laws made by them.<sup>1</sup> Cornbury was not to remit any fines or forfeitures over ten pounds, nor dispose of any such until directed so to do by the home government, but meanwhile he might suspend such fines.<sup>2</sup>

The exercise of the governor's judicial powers were also prescribed in some detail. In spite of the authority given by his commission, he was not to erect any court or office of judicature not previously existing without order from the crown, and a list of those already existing was to be sent home with all speed. With the council, Cornbury was to regulate all salaries and fees, but these were to be in moderation. That there might be no extravagance, the fees were to be hung up where they were to be charged, and lists were to be sent to the board of trade.<sup>3</sup> No man's goods were to be taken, except by laws as nearly as possible like those of England, and no judge, justice or similar officer was to be removed without good cause signified to the crown and board of trade. To prevent arbitrary removals, the commissions of judges and justices, granted with the consent of the council, were to be unlimited as to time. Cornbury himself was not to execute any such office or allow any one else to execute them by deputy.<sup>4</sup>

Though religious questions can scarcely be said to have occupied much of the governor's attention, his instructions minutely covered this field. There was to be perfect liberty



the declaration of Quakers to stand for an oath. Quakers were to be admitted to places of trust upon signing the usual declarations instead of the oaths.<sup>1</sup> Religion was to be encouraged, and care was to be taken that the Prayer book be read and the sacrament administered according to the Church of England. Cornbury was to promote the building of churches and the maintenance of orthodox ministers. Encouragement was to be given to the jurisdiction of the Bishop of London. Collation to benefices, the granting of marriage licenses and the probate of wills were reserved to the governor, but no minister was to be accepted without a certificate from the bishop. If any occasioned scandal, he was to be removed, and no one not having proper orders was to preach in an orthodox church.<sup>2</sup> With the aid of the council and assembly the governor was to find the best means of converting the Indians and negroes.<sup>3</sup>

Military matters naturally received careful attention in the instructions. Cornbury was to see to it that the inhabitants were properly armed and trained in military exercises, but such training was not to interfere needlessly with the people, and no articles of war or other law martial was to be enforced except by the advice of the council.<sup>4</sup> To prevent abuse, Cornbury was given the right to impress men for the royal navy, and the high admiral was instructed that captains should be ordered to call upon the governor for the men they required instead of impressing them for themselves.<sup>5</sup> The governor was likewise to make

<sup>1</sup> *New Jersey Archives*, vol. ii, pp. 522-3.

<sup>2</sup> *Ibid.*, vol. ii, pp. 528-9.

<sup>3</sup> *Ibid.*, vol. ii, p. 532.

a report of the fortifications existing in the province, as well as of what additional ones were needed.<sup>1</sup> Cornbury was to encourage the Indians to the English trade rather than that with any other nation, but he was to appoint proper officers in portions of the colony bordering on the Indians who might raise men to oppose them in case of sudden invasion. In case any colony, especially New York, needed assistance, he was to see that it was furnished according to the quotas which had already been prepared in England.<sup>2</sup>

The important subject of trade was of course not neglected. The governor was to use his best endeavors to promote trade, but was to take all means to enforce the acts of trade and navigation. Constant protection was to be given to all officers of the customs. Cornbury was to see to it that entries were made at all ports of all imports and exports, as well as of all vessels entering. These entries were to be forwarded yearly to England. To prevent losses from the French, all vessels were to leave New Jersey either in fleets or under convoy.<sup>3</sup> Cornbury was also ordered to encourage the Royal African Company, and to prevent illegal trade with any part of Africa under its charter. He was to submit a yearly account of all negroes supplied and at what rates. The home government was also to be kept informed of the chief products of the colony and its chief wants in the way of trade.<sup>4</sup> Reference to piracy recalls at once to the mind of the student the circumstances of the period. All goods piratically seized were ordered to be taken and held subject to the disposal of the crown, while, in accordance with a commission already sent him as governor of New York for the trying of pirates in

<sup>1</sup> *New Jersey Archives*, vol. ii, p. 526.

<sup>2</sup> *Ibid.*, vol. ii, pp. 532-3.

<sup>3</sup> *Ibid.*, vol. ii, pp. 526-7.

<sup>4</sup> *Ibid.*, vol. ii, pp. 530-1.

these parts, Cornbury was to take steps for their suppression pursuant to act of Parliament.<sup>1</sup>

An important part of the instructions related to the dealings between the royal government and the proprietors, who, it must be remembered, had surrendered upon the understanding that the royal officers should be instructed to respect their rights over the land. The governor was ordered to secure the passage of an act confirming the lands of the province to the proprietors and those who had purchased under them. Their quit-rents were to be secured, and all other privileges granted them by James of York, except the right of government. All private lands properly held were to be confirmed under such conditions as should tend to their most speedy improvement. But Cornbury was not to consent to any act taxing unprofitable land. None but the proprietors were to buy lands of the Indians, and Cornbury was to permit the surveyors of the proprietors to carry on their work and to allow and assist the agents appointed to collect the quit-rents, provided they took the customary oaths of allegiance to the crown. He was to see, however, that all lands purchased were cultivated.<sup>2</sup>

As to efforts to spread intellectual enlightenment among the provincials little is said in the instructions except that no one was to be permitted to have a printing press without a license, and no book was to be published without leave first obtained.<sup>3</sup>

Real effort is noticeable to secure for the home government proper information regarding the colony and the conduct of the government. A man of the plantations and a

charges was to be submitted as soon as possible.<sup>1</sup> The secretary of the colony was to be directed to prepare copies of all acts or public orders which were to be forwarded to the crown and board of trade. If the secretary did not do so he was to forfeit his place.<sup>2</sup> A full account of the inhabitants was to be at once transmitted to England, and each year a record of increase or decrease of population was to be sent. The governor was further to keep a record of all born, christened or buried.<sup>3</sup>

If any matter arose not covered by the instructions, Cornbury was to take action temporarily, with the advice of the council, but was to send word with all due speed to the home authorities.<sup>4</sup> He was, moreover, to maintain correspondence with one of the principal secretaries of state and with the board of trade as to the condition of affairs in the province.<sup>5</sup> It was also required that Cornbury examine the work of all the patent officers of the crown and report to the board. He might suspend any patentee or deputy, though he must not fill such office except temporarily.<sup>6</sup>

Such is a brief summary of the more important points included in the instructions, with the exception of those dealing directly with the governor's work in legislation and those relating to the structure and functions of the courts. These parts of the governor's duties will be considered separately. It must not be forgotten, however, that they constituted two of his most important fields of action.

There were certain ways, however, in which the position of the governor might be altered during his administration.

thorities at home gave advice regarding his conduct which he was bound, practically at any rate, to obey. This correspondence, however, related nearly always to matters of policy rather than of power. Most of the letters dealt with the governor's attitude toward the legislature of the province, with the confirmation and disallowance of provincial acts by the crown, and with grievances presented by subjects. But from time to time, as circumstances demanded, additional instructions were issued to the governor, which limited him in just the same way as the original articles. These additional instructions also sometimes had to do with the governor's legislative functions, but that was by no means always the case.

The first additional instructions received by Cornbury bore date of April 20, 1705.<sup>1</sup> The first paragraphs referred to the qualifications of representatives in the assembly, but it was then ordered that as soon as proper provisions should have been made for the support of the government, either the governor or the lieutenant-governor should reside constantly in the province. This provision led to the stationing of Ingoldsby permanently at Burlington.<sup>2</sup> Lastly, it was ordered that no fees should be granted or taken by any provincial officer for grants of land made by the proprietors or their agents. In May, 1707, another instruction was given<sup>3</sup> providing for the administration of the province in case of Cornbury's death or absence, if there should be no lieutenant-governor. The original articles had ordered that in such case the council should assume the administration, with the eldest councillor presiding, but it was now declared, because of disputes arising in other provinces from the

former rule, that the eldest councillor who was named first and who should be at the time residing in the province should assume the administration until the governor return or the lords' pleasure be further known.

The home authorities evidently believed that the troubles of Lord Cornbury's administration were not due to defects in the governor's legal position, for when that worthy executive was at length recalled in 1708 and Lord Lovelace commissioned as his successor, no very radical changes in the instructions appear.<sup>1</sup> The chief alterations were naturally in the articles dealing with the assembly and the governor's relations with it. The only important article omitted was that requiring the executive to see that merchant vessels should leave New Jersey only in fleets or under convoy. But there were naturally, owing to the war, several additions to the instructions upon military affairs. Lovelace was to take care that valuable information was not obtained by the French through the capture of merchant vessels bound from the colony.<sup>2</sup> The governor was also to hinder by all means possible secret correspondence with the French in the West Indies which was known to have been carried on during "the late war." All vessels commissioned by Lovelace were henceforth to fly a flag, the form of which was given, inasmuch as certain captains claiming to act under commission from colonial governors had brought dishonor on the royal service by committing irregularities while flying colors like those of the navy. Other additional articles referred to the work of the courts. It should be stated, however, that in a communication to Lovelace of January, 1708, the lords of trade rejected the

<sup>1</sup> *New Jersey Archives*, vol. iii, p. 316.

<sup>2</sup> See Circular Letter from the Lords of Trade to the Governors of Plantations, *New Jersey Archives*, vol. iii, p. 60.

interpretation that Cornbury had put on several of his instructions and warned the new executive against following his example.<sup>1</sup>

During the brief administration of Lovelace no additional instructions were sent. As for Ingoldsby, who followed him as lieutenant-governor, the home authorities, upon investigation, revoked his commission in October, 1709,<sup>2</sup> and did not even deign to correspond with him regarding New Jersey affairs except to convey their order that he quit the administration at once.

The instructions of Governor Hunter must be regarded as representing the more mature opinions of the home authorities relative to New Jersey, as the numerous complaints from and the party struggles in the colony had involved many of the points covered. They, however, repeat with only a few verbal modifications those of Lovelace. Several articles were indeed added, but they concerned the execution of trade laws and regulations passed for the entire colonial system, and bore no special relation to New Jersey.<sup>3</sup> During the successful administration of Hunter no important additional instructions were sent.

When William Burnet was commissioned in 1720, his instructions were similar to those of Lovelace and Hunter.<sup>4</sup> He, however, later received a number of additional articles relating to new questions of colonial politics which were forcing themselves upon the attention of the home government. In September, 1720, he was ordered not to assent to the issue of bills of credit unless the act contained a

<sup>1</sup> *New Jersey Archives*, vol. iii, p. 323.

<sup>2</sup> *Ibid.*, vol. iii, p. 474.

clause providing that it should not take effect till approved by the crown. But exception was made of acts for support of the government.<sup>1</sup> In 1721 there was an instruction relative to church affairs<sup>2</sup> which, as we shall see, had caused trouble to Hunter. Whereas the governor's previous instructions had commanded that he should not prefer to a benefice any clergyman who had not a certificate from the Bishop of London or some other bishop, he was now instructed to prefer only such as were certified by the Bishop of London.

The next year there was a lengthy additional instruction resulting from the information that a large trade was carried on secretly from the East Indies directly with America.<sup>3</sup> Burnet was ordered to execute most strictly the acts of Parliament dealing with such illegal trade. The penalty for neglect was immediate removal and a fine of £1000, with the King's highest displeasure. All vessels illegally bringing negroes or East Indian goods were to be required to leave the jurisdiction at once. If a vessel belonging to persons in New Jersey brought in such goods or bartered or sold them, it was to be seized. If any customs officer was remiss Burnet was to suspend him immediately. He was also required to transmit from time to time an account of his proceedings to the home government.

In 1723 there was still another additional instruction relative to the approval of private acts by the governor,<sup>4</sup> and a little later another changing the manner of electing representatives for the assembly.<sup>5</sup> In July, 1726, an import-



tences in cases of appeal to the crown.<sup>1</sup> It had formerly been the rule that execution of sentence be not suspended pending appeals. But this had caused great harm, as sometimes those appealing were ruined before the Crown's pleasure could be known. Now it was ordered that there should be suspension of sentence unless the appellee gave ample security to make full restitution of all that the appellant may have lost in case judgment be reversed. In 1727, upon petition of the Bishop of London, an additional instruction for all colonial governors was ordered, commanding them to enforce the laws against vice and to encourage schools.<sup>2</sup>

The instructions given to Montgomerie show some rearrangement of articles, as well as several additions.<sup>3</sup> The additional instructions given to Burnet were of course included. The changes related in part to legislation and the composition of the council and general assembly. Several new instructions related to judicial matters. Montgomerie was not to remit any fines or forfeitures over £10. He might, however, suspend the payment of larger sums until he had communicated with the home government. In addition, he was not to dispose of forfeitures or escheats until the sheriff or other proper officer had made inquiry by a jury upon their oaths into their true value. As there had been complaint about the proceedings of the courts,<sup>4</sup> Montgomerie was to observe great care that their duties were properly performed, and no person was henceforth to be sent as a prisoner to England unless sufficient proof of his crime was sent with him.<sup>5</sup>

As the customs officers and the surveyor-general of cus-

<sup>1</sup> *New Jersey Archives*, vol. v, pp. 122, 157.

toms had complained that they were hindered by being obliged to serve on juries and in the militia, Montgomerie was to see that such abuse ceased. Further, in case, owing to the great distances, the surveyor-general did not promptly appoint officers of the customs, the governor was to make temporary appointments that there be no intermission of the service. But Montgomerie was not under any pretense to interfere with the powers of the surveyor-general of the customs.<sup>1</sup>

As there had been irregularities in the granting of commissions to private ships of war, Montgomerie was to govern himself strictly by the commissions and instructions granted such vessels in England. Further, he was not to grant letters of marque or reprisal against any state in amity with England, without special command. Store-houses were forthwith to be provided throughout the province for keeping arms, ammunition and other public stores.<sup>2</sup>

A part of Burnet's instructions relating to the trial of accessories in cases of piracy was omitted, since it had been covered by act of Parliament.<sup>3</sup>

The sole additional instruction, sent to Montgomerie in 1730, ordered him to support the commission which had given the Bishop of London and his commissaries ecclesiastical jurisdiction over the colonies.<sup>4</sup> During the brief rule of Cosby there were no further developments which need occupy our attention here.

Upon the whole, though some important alterations in detail had been made since Cornbury's time, the chief executive powers certainly remained, as far as the instructions from the home government go, essentially unimpaired. The

<sup>1</sup> *New Jersey Archives*, vol. v, p. 176.

<sup>2</sup> *Ibid.*, vol. v, p. 178.

<sup>3</sup> *Ibid.*, vol. v, p. 170.

<sup>4</sup> *Ibid.*, vol. v, pp. 264-265.

only important lines of change were in requiring the governor to give more attention to the acts of trade and in compelling him to prevent unwarranted issues of bills of credit.

There was, however, another way in which the executive powers of the governor might be changed and limited. This was through the passage of acts by the colonial legislature controlling matters covered by the commission and instructions of the chief executive. The efforts of the assembly to usurp in this way the powers of the governor gave rise to several conflicts between the departments of the government. Since these conflicts form one of the most interesting and instructive parts of the political history of the province, we shall reserve them for separate consideration. It may be well in this place, however, to indicate to what extent, as a result, the powers of the executive were restricted.

It must be noted at the beginning that, in spite of the fierce political quarrels in New Jersey, the attacks upon the governor's executive power as such were not as bitter or as continuous as in some other provinces, nor was that power in the end so greatly limited. Further, there was a tendency on the part of the wiser executives, like Hunter and Burnet, not to object seriously to the passage of legislative acts regulating executive functions when no vital matter was at stake.<sup>1</sup> It seems evident as well that upon several such questions both departments in New Jersey were satisfied to follow the precedents set by more powerful neighboring colonies.<sup>2</sup>

<sup>1</sup> Both allowed the passage of acts indirectly reducing fees.

<sup>2</sup> Notably in the matter of the accountability of the treasurer and with regard to the exclusive right of the representatives to initiate money bills.

Of all the functions assigned to the governor, perhaps it was his power over the courts which was most frequently attacked. But, though the assembly did succeed in forcing the governor to comply with its desires regarding the judicial system, it was not able to limit his powers by law to any considerable extent. Several acts regulating court procedure were carried, notably laws preventing corruption,<sup>1</sup> malicious prosecution by information,<sup>2</sup> and multiplicity of law suits.<sup>3</sup> But acts for shortening law suits and for regulating the practice of the law,<sup>4</sup> though twice passed, were disallowed by the home government. The assembly never succeeded in prescribing the organization of the courts or their place of sessions, though it greatly coveted the right.<sup>5</sup> The same result came from efforts to limit the legal court fees. Laws regulating fees, even though purporting merely to supplement and enforce the governors' ordinances, were disallowed by the crown in 1721 and 1735.<sup>6</sup>

The governor's control over the militia was never seriously threatened, although, owing to the tyrannical use made by Cornbury and his clique of their powers, the Third Assembly refused to pass an act for disciplining the forces, and thus virtually dissolved the militia.<sup>7</sup> The governor's ecclesiastical powers, since they did not give rise to serious controversy, were never questioned, nor were his powers over trade.

The financial control of the executive, on the other hand,

<sup>1</sup> March, 1713-14; Allinson, *Acts of the General Assembly of the Province of New Jersey*.

<sup>2</sup> *Ibid.*

<sup>3</sup> May, 1722; *ibid.*

<sup>4</sup> March, 1713-14, disallowed Jan. 20, 1721; Feb., 1727-8, disallowed Nov. 25, 1731.

was another center of dispute. This came about, however, largely because Cornbury disobeyed at least the spirit of his instructions in refusing to the assembly the right to examine in a proper way the receiver-general's accounts.<sup>1</sup> The legislation upon this field virtually substituted treasurers responsible to the legislature, and with duties limited by law, for the official originally intended to be the representative of the English Treasury Board. But by allowing these treasurers to be nominally appointed by the governor, and to keep the title and status of receivers-general, the assembly did not encroach theoretically upon the powers of the executive.

Our general conclusion must therefore be that, legally considered, the limitation of the executive power during the Union Period was not great. Montgomerie and Cosby, theoretically, possessed the same rights as Cornbury and Lovelace. Unfortunately for the royal governors, however, the legal possession of power and the ability to exercise it practically are not the same thing. To understand to what extent they differed in New Jersey we must now turn our attention to the efforts of the governors to apply their executive powers in actual government.

<sup>1</sup> *Assembly Journal*, May 14, 1707.

## CHAPTER XI

### THE EXECUTIVE POWER IN PRACTICAL OPERATION

IN its actual workings the executive power in New Jersey was, during the period from 1702 to 1738, different in some important respects from that in the other provinces. This difference was the result of the fact that the governor of New Jersey was at the same time governor of New York. The latter province, as larger and more exposed to attacks from both Indians and French, necessarily occupied the greater part of his time and attention. During the Union Period no governor of New Jersey ever resided in the province for any considerable length of time; and the only prolonged visits of the executive were during the sessions of the assembly, held alternately at Perth Amboy and Burlington.<sup>1</sup> Even the journey to Burlington was regarded by Cornbury as a hardship, and was not relished by the other governors. In addition to these visits, the governors made occasional trips, usually to Amboy, but sometimes to Bergen and other towns in the neighborhood of New York, in order to hold meetings of the council when special necessity required. But in spite of these visits, the chief executive was not usually on the soil of New Jersey, Cornbury at one time not entering the province for nine months.<sup>2</sup>

<sup>1</sup> Hunter and Burnet, however, maintained houses in Perth Amboy;

The governors regularly resided in New York, which was, to be sure, within an easy journey of the chief towns of East Jersey, and during the eighteenth century communication by mail was always possible.<sup>1</sup> It was, however, a real hardship for the people of West Jersey, especially of the remoter counties like Salem and Cape May, to apply to them personally.<sup>2</sup>

Perhaps more important than this mere absence from the soil was the fact that the governor had to give so much of his time and attention to the affairs of New York.<sup>3</sup> He was absent on long visits to the frontiers, and the administration of so large a province, and one where political factions were so bitter, was in itself a sufficient task for all but the ablest executives. Moreover, the governor's closest friends and associates were usually residents of New York,<sup>4</sup> and not infrequently were they named to places of trust and profit in the sister colony in which they had little at stake.<sup>5</sup> It was also unfortunate that some of the most distinguished men of New Jersey, notably Lewis Morris and James Alexander,<sup>6</sup> possessed large interests in New York, and took an active part in the politics of that colony. Thus the interests of New Jersey were imperiled on at least one occasion,<sup>7</sup> because of contentions and quarrels which originally bore no relation to her affairs. When we consider the bitterness of the party strife in the Jerseys and its peculiarly complicated character, the unwisdom of the executive union becomes the more clear. The situation in New Jersey

<sup>1</sup> *New Jersey Archives*, vol. iii, p. 181.

<sup>2</sup> *Ibid.*, vol. iii, p. 244.

<sup>3</sup> *Ibid.*, vol. v, p. 299.

<sup>4</sup> *Ibid.*, vol. v, p. 453.

<sup>5</sup> *Proceedings of the Council of the State of New Jersey*, 1773, p. 100.

demanding the entire attention of an able statesman. The home government, though undoubtedly not intentionally unjust to the Jerseys, must certainly bear the blame for its shortsightedness.

Under these conditions, the honesty and efficiency of the administration depended in a great degree upon the men named by the crown and by the governor to subordinate executive offices, for their work could not have the same oversight as in provinces where the governor was personally present.<sup>1</sup> During entire years New Jersey was practically without government, except that of the judges, sheriffs, and justices of the peace.

Under Lord Cornbury nothing could be much worse; corruption ruled, and the sole object of the chief executive and many of his subordinates was personal profit and advantage. Cornbury and the clique which surrounded him were the better enabled to carry out their schemes because of the fierce party struggles going on in the province. In East Jersey they found the proprietary interests in violent conflict with the anti-proprietary element among the settlers, which took its stand upon the Elizabethtown purchase and the Nicolls grants.<sup>2</sup> Among the proprietors themselves there was the bitter struggle between the majority shareholders, representing mainly the Scotch purchasers, who now made Perth Amboy their headquarters, and a very energetic and unscrupulous minority styling themselves the "English Proprietors," led by Dockwra and Peter Sonmans. In West Jersey the conflict was perhaps not quite so bitter. The Quaker proprietors represented in the council of pro-



the determined foe of the controlling element, and an anti-Quaker political party had already developed.<sup>1</sup>

Cornbury began operations by receiving a tip of £200 from the Perth Amboy group, even before he published his commission.<sup>2</sup> It took him, or perhaps it would be more correct to say his advisers, some little time, however, before they thoroughly understood the situation and how to make use of it. A new executive was naturally much influenced by the council, and in this body Lewis Morris and Samuel Jennings were prominent, although it also contained several strong opponents of the leading proprietors.

Under the influence of Morris and his supporters, Cornbury seems to have commenced his actual administration respectably enough, although his suspicion of the Quakers was at once apparent. When he administered the oaths to his council, Jennings, Davenport, and Deacon refused to swear, and demanded that they be allowed the lawful affirmation instead. But Cornbury, although his instructions were positive and direct upon the point, hesitated to permit this until the Quakers themselves bade him examine his instructions further. He was then obliged to qualify them under the 53d article. The governor, however, was enraged at this proof that the proprietors, through Lewis Morris, had obtained a copy of his instructions. In his first official letter to the lords of trade he complained of this fact, and also remonstrated with the home government about employing the Quakers further in places of trust. He represented that it was unnecessary, as a sufficient number of persons were properly qualified who were not Quakers, and the latter would always oppose a militia act.<sup>3</sup>

<sup>1</sup> *New Jersey Archives*, vol. ii, p. 479; vol. ii, p. 15.

<sup>2</sup> *Ibid.*, vol. iii, p. 207.

<sup>3</sup> *Ibid.*, vol. iii, p. 2 *et seq.*

Nevertheless, the earlier appointments of the governor gave no special offence. He named Roger Mompesson, a London lawyer of experience and ability, who had recently arrived in America, as chief justice.<sup>1</sup> William Pinhorne, the proprietor of Mount Pinhorne, was second judge,<sup>2</sup> and Alex. Griffith, whose true character had not yet been shown, was attorney-general.<sup>3</sup> Peter Fauconnier, a Huguenot merchant of New York, was receiver-general.<sup>4</sup> Richard Townley<sup>5</sup> and Coxe<sup>6</sup> became colonels of the militia of East and West Jersey respectively. None of these officers except Coxe had played a leading part in Jersey affairs, though he was, of course, an opponent of the leading proprietors. On the other hand, Thomas Gordon, the Scotch proprietor, was high sheriff of East Jersey,<sup>7</sup> and Cornbury recognized and supported the appointments of John Barclay as receiver of the proprietors' quit<sup>8</sup> rents in East Jersey, and of Thomas Gordon as their register. Basse, distinctly a dangerous man under the circumstances, had received the patent from the crown as provincial secretary,<sup>9</sup> but for this mistake at least Cornbury was not responsible. His lordship did adopt the questionable policy of naming the members of his council as associate provincial judges and as judges of the pleas in the counties.<sup>10</sup> Even the Friend, Samuel Jennings, was named as judge in Burlington County.<sup>11</sup> But in his appointments of sheriffs and justices,

<sup>1</sup> *Liber AAA of Commissions*, pp. 23, 40.

<sup>2</sup> *Ibid.*, pp. 23, 41.

<sup>3</sup> Griffith held a patent for this office. *New Jersey Archives*, vol. xiii, p. 302.

<sup>4</sup> *Liber AAA of Commissions*, p. 23.

<sup>5</sup> *Ibid.*, p. 23.

the governor at first certainly recognized both parties. Cornbury also sanctioned the efforts of the missionary clergymen, Brook at Elizabethtown and Amboy,<sup>1</sup> and Moore, who had begun work in 1705, at Burlington and elsewhere in West Jersey.<sup>2</sup>

The opening of the new administration was even marked by one really noteworthy achievement, for Cornbury's judiciary ordinance, while fully in accordance with his instructions to continue the existing courts of the province, reorganized them with excellent judgment, as will be more fully explained in the chapter on the judicial system, and thus laid the basis for an effective system of courts. There can be little doubt that Mompesson was the real author of this commendable work.<sup>3</sup>

But with such a man as Cornbury at the head of affairs, no continuously good administration was possible. Provincial politicians were never in doubt as to his true character,<sup>4</sup> while, on the other hand, his habits made him the subject of popular contempt. His appointees soon showed that they were willing to be parties to, if not indeed actually the instigators of, the governor's corrupt acts. Mompesson and Pinhorne allowed themselves to become mere tools of his tyranny, while Ingoldsby, Basse, Griffith, and Fauconnier appear in an even worse light. Even Coxe, doubtless the ablest of them all, did not hesitate to make use of the governor for his own interest. Thus the governor was surrounded by a corrupt ring, the practices of which were, to say the least, more shameless than those of unscrupulous modern politicians.

<sup>1</sup> Whitehead, *Contributions to the Early History of Perth Amboy*,  
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This "ring" was virtually the governor's council, for all the persons mentioned either originally were or became members of that body except Fauconnier, Griffith, and Basse, and the latter was its secretary. Certain other councilors, notably Peter Sonmans, and Col. Richard Townley, were also leading members of Cornbury's clique; but his opponents were soon forced from the council and all other posts of trust. Lewis Morris was suspended,<sup>1</sup> and only saved from removal by his influence with the home government,<sup>2</sup> while Jenninngs voluntarily resigned.<sup>3</sup> Thus the government of New Jersey, like that of so many provinces, was virtually monopolized by a small group of favorites of the governor, who shielded each other in their corrupt practices. It is a little curious to note that Col. Quarry, the surveyor-general of Her Majesty's customs, was in the main a supporter of the "ring."<sup>4</sup> Though a rather subservient official, Quarry bore the reputation of being both zealous and upright.<sup>5</sup>

Difficulty began when it became apparent to Cornbury, during the sessions of the First Assembly, that the proprietors and their supporters, who were in the majority, were not willing to make a sufficiently large appropriation. Meanwhile Coxe and the anti-proprietary leaders had addressed themselves to the governor through Col. Quarry,<sup>6</sup> and the strongest circumstantial evidence goes to show that a "deal" was agreed upon whereby the anti-proprietary party were to choose men for the next assembly who would

<sup>1</sup> *New Jersey Archives*. vol. iii. p. 77.

"effectually answer all the ends of Government," while Cornbury was to prevent the enforcement of the claims of the proprietors over Elizabethtown, and to support the "English Proprietors" against the Perth Amboy group and Coxe against the Quakers. As a part of this statesmanlike transaction, a fund, referred to commonly as the "Blind Tax," was raised by the anti-proprietary party in East Jersey as a bribe to Cornbury. This "Blind Tax" was raised through numerous comparatively small contributions by certain of the inhabitants of Middletown, Elizabethtown, and even of the other towns, and the proceeding was so ill-concealed that the proprietary supporters had little difficulty later in laying bare the whole proceeding. The actual collecting seems to have been done chiefly by Richard Salter and John Bowne, of Monmouth.<sup>1</sup>

This agreement bore the most immediate fruit, not only in the dissolution of the first assembly and the securing of an anti-proprietary majority in the second by the most unjust interference on the part of Cornbury,<sup>2</sup> but also in the use of the strictly executive power of the governor. We must note first of all, however, that the "deal" into which Cornbury had entered was in itself the most outrageous violation of his instructions, which directly commanded him to keep aloof from parties and to secure the confirmation of the rights of the proprietors.<sup>3</sup>

It was after the conclusion of his alliance with the anti-proprietary party that the governor suspended Morris from the council for disobedience, and forced Jennings to resign. He did not stop, however, with this deposition of the leaders. The supporters of the proprietors were also excluded

from the commissions of the peace, from the office of sheriff, and from command in the militia. Their places were supplied with tools of the council, several of whom were unfit and corrupt. Among the "scandalous persons" of whom complaint was especially made were Richard Salter, the collector of the "Blind Tax," who was appointed a justice of the peace for Monmouth;<sup>1</sup> Thomas Rillingworth, a judge in Salem County,<sup>2</sup> and William Fisher, sheriff of Burlington.<sup>3</sup> It was claimed that the latter at least was named by Cornbury contrary to the advice of his council,<sup>4</sup> though the lords of trade upheld his right to do this.<sup>5</sup> In one instance also complaint was made that a sheriff was named only three days before election, and that in consequence many of the electors had no notice as to who was sheriff or when the election was to be held.<sup>6</sup>

The control of the courts was carried out with the same low motives. Indeed, of all the maladministration of Cornbury's time, that of the judiciary was perhaps the most shameless.<sup>7</sup> The Supreme Court, under the subservient Mompesson and Pinhorne, was occupied largely with prosecutions against persons who had opposed or spoken contemptuously of the government. When grand juries refused to indict such persons, as was apparently always the case, informations were filed by "that vile fellow Griffith,"<sup>8</sup> and the victims tried under these. Yet, owing to the brave stand of the juries, only in one case was a verdict of guilty found, and that was because the accused, one Pomphrey,

<sup>1</sup> *Liber AAA of Commissions*, p. 15.

<sup>2</sup> *Ibid.*, p. 34.

<sup>3</sup> *Ibid.*, p. 29.

<sup>4</sup> *New Jersey Archives*, vol. iii, pp. 93, 152, 156.

produced no witnesses and had no counsel.<sup>1</sup> The court did not dare to sentence even him. Yet the court endeavored to punish the enemies of Cornbury without obtaining verdicts. Persons were compelled to attend session after session before being brought to trial, and when acquitted after trials upon information, were compelled to pay costs.<sup>2</sup> Attorneys also found it so dangerous to act against the government that eventually no one could be found to defend an accused person.<sup>3</sup> Another abuse was the refusing of appeals upon properly drawn writs, notably in the case of Peter Blackfield, of Salem County, a matter for some time regarded as an especial public grievance.<sup>4</sup> ✓

The most notorious single case was, however, that of Thomas Gordon, who was arrested for refusing to obey Cornbury's order to deliver the proprietary records to Secretary Basse. For this offence he was suspended from practicing as an attorney, and twice brought before the Supreme Court, only to be discharged. Immediately after the session of the assembly which had chosen him speaker to carry on the brave work of Jennings, he was arbitrarily imprisoned for fifteen days, and refused the writ of *habeas corpus* by Judge Pinhorne, and even after his final release he was not restored the right to practice. This injustice was the more inexcusable because of the part which Gordon had played in the political struggle against the governor.<sup>5</sup>

The lower courts were naturally guilty of similar proceedings, as they were largely conducted by the same persons. In all the courts there were numerous complaints of the charging of unjust and excessive fees.<sup>6</sup>

<sup>1</sup> Field, *Provincial Courts of New Jersey*, p. 56.

<sup>2</sup> *New Jersey Archives*, vol. iv, p. 41.

It is, indeed, probable that the opponents of Cornbury and his clique represented their proceedings in the worst colors, and their charges may not have always been true in detail. But there is no reasonable room for doubt that the maladministration of the courts was essentially as charged.<sup>1</sup> Hunter, at any rate, was convinced of this, and he certainly was in a position to pass judgment. So high did the feeling run against those concerned in the corrupt proceedings, that, upon the removal of Cornbury, efforts immediately began to secure justice against his tools. Basse and Sonmans were actually indicted for perjury, forgery, illegal handling of juries, and other crimes. But the death of Lovelace and the accession of Ingoldsby prevented them from being brought to justice.<sup>2</sup>

Cornbury himself had some direct share in the unjust proceedings of the courts, as on several occasions he actually presided over the Supreme Court, probably in imitation of the king sitting in King's Bench.<sup>3</sup> It was also asserted that in two cases he caused the sentence of persons convicted of willful murder to be suspended indefinitely without referring the matter to the crown. Thus he practically usurped the pardoning power in such cases, in direct opposition to his instructions.<sup>4</sup>

Cornbury and his satellites made pretense of great zeal in the exercise of their control over the military system. Energy in this department was indeed highly proper, as a great war with France was raging, and New York was directly exposed to attacks. New Jersey, however, was a particularly unmilitary province, partly because she was pro-

<sup>1</sup> Field, *op. cit.*, p. 56.

<sup>2</sup> *Minutes of the Supreme Court (1704-1715)*, pp. 75, 80-1.



tected by New York from direct attacks, and partly because of the large Quaker and Dutch elements in her population. In his very first letter to the lords of trade, Cornbury stated that he had "settled" the militia of West Jersey and begun on that of the Eastern Division,<sup>1</sup> but this apparently meant little more than the appointment of officers. Almost immediately thereafter he began to complain of the opposition offered by the Quakers to the service of the queen,<sup>2</sup> and in these representations he was supported by Quarry, Coxe, and others.<sup>3</sup>

The first assembly, under proprietary control, would take no action on the governor's recommendation for the passage of a militia act.<sup>4</sup> But the clique in power, of course, realized that they had found an excellent means of making a show of patriotism and injuring the Quakers at the same time, and when they gained control of the second assembly, they carried through a militia bill establishing severe fines for those who would not attend musters, and authorizing the seizure of their goods if they did not pay.<sup>5</sup> The act was especially unjust in that it did not provide for a return of the excess over the amount of the fine after the goods had been sold. Its great object was undoubtedly to enable the creatures of Cornbury to injure and persecute their opponents under pretense of the law. Much harm was actually done to the Friends through the seizure of their property,<sup>6</sup> but public opinion in West Jersey was so strongly in their favor that several of the constables of Burlington County refused to make distress upon them. For this conduct

<sup>1</sup> *New Jersey Archives*, vol. iii, p. 6.    <sup>2</sup> *Ibid.*, vol. iii, pp. 4, 114, 269.

<sup>3</sup> *Ibid.*, vol. iii, pp. 53, 83, 236, 273, etc.

<sup>4</sup> *Assembly Journal*, Sept. 7, 1704.

Richard Wildgoose and seven other ex-constables were prosecuted upon informations in November, 1708.<sup>1</sup> The militia act became, indeed, one of the grievances of the province.<sup>2</sup> After the usual delay, however, it was disallowed by the home government.<sup>3</sup>

Whether the militia of New Jersey, as organized under this act, was active and efficient as Cornbury claimed, the evidence left us is not sufficient to determine, as luckily it was not called upon for the actual defence of the province. The dissatisfaction of the inhabitants with the control of Cornbury was so great, and the incompetency and dishonesty of his subordinates so manifest, that the existence of an efficient system, even for a time, is highly improbable. Upon the lapsing of the act of 1704, the assembly, now again under the control of the proprietary party, absolutely refused to take further action regarding the militia, and accordingly, when Lovelace arrived, he found it virtually dissolved.

Cornbury undoubtedly did carry out the letter of his instructions regarding military affairs. He issued commissions to several privateers against the French; <sup>4</sup> he regularly commissioned militia officers in the various localities; he recommended the passage of a militia act to each assembly, and even asked aid for the defence of New York. But, by allowing his satellites to make use of the military necessities of the province for party purposes and for the gratifica-

<sup>1</sup> *Minutes of the Supreme Court (1704-1715)*, p. 57.

<sup>2</sup> *Assembly Journal*, May 12, 1708.

<sup>3</sup> Apparently on the ground that the money levied might be paid into the hands of any person the governor might appoint and because the uses to which it was to be put were not specified, *Archives*, vol. iii, p. 324.

tion of personal spite, he rendered good results impossible, and, indeed, made the military administration not the least of the evils of which New Jersey had to complain.

The governor, although both he and his henchmen made great parade of zeal for the Church of England, gave little attention to ecclesiastical affairs. This in itself, however, was hardly blameworthy, because the Anglicans had as yet little foothold in the Jerseys. Still the conduct of his lordship in this field was no more happy than in other directions. Though services were occasionally held at a number of places in the two divisions, Amboy, Elizabethtown and Burlington alone seem to have had promising parishes, and only two missionary clergymen, sent by the Society for the Propagation of the Gospel, were at work—Brook in East Jersey and Moore in West Jersey. Moore soon identified himself with the party of opposition to Cornbury, and bravely denounced from the pulpit his debauchery and degraded habits.<sup>1</sup> He also refused the sacrament to Lieutenant-Governor Ingoldsby.<sup>2</sup> For this boldness Moore was in 1707 summoned to New York, but he took the position that while Cornbury was in New York he had no power in New Jersey, and refused to obey.<sup>3</sup> Cornbury then had Moore arrested by the sheriff of Burlington, brought to Amboy, and imprisoned in the fort at New York.<sup>4</sup> In his opposition to the governor, Moore had the sympathy of Brook, though the latter had taken no active part in the controversy.<sup>5</sup> Now, taking advantage of Cornbury's absence in Albany, Moore and Brook both escaped from the

<sup>1</sup> Hills, *History of the Church in Burlington*, pp. 66, 71 et seq.

<sup>2</sup> *Ibid.*, p. 79.

<sup>3</sup> *Ibid.*; *New Jersey Archives*, vol. iii, p. 270.

province and sailed from Boston for England.<sup>1</sup> This highly characteristic incident seems to have furnished the only occasion upon which Cornbury exercised any important power over the Church.<sup>2</sup> The nominal adherence of the governor and most of his crew was, however, a serious obstacle to the work of those who were bravely struggling to build up the Episcopal Church in New Jersey.<sup>3</sup>

While Cornbury did not openly violate the command to guarantee liberty of conscience, we have already seen that, through the militia act, he inflicted upon the Quakers no inconsiderable hardship. From the beginning he adopted toward them an attitude of dislike and distrust; refused to put them in positions of trust whenever he could avoid it; and in his correspondence with the home government endeavored to show that they were opposed to all government and order.<sup>4</sup> In a lesser degree he was unfriendly to all dissenters.

In the exercise of his financial duties the governor was no less unscrupulous than in other fields. The greatest outrage of his administration was his acceptance of two bribes,<sup>5</sup> and suspicion of further corruption was probably well-founded. While he did not so far violate his instructions as to refuse to the assembly inspection of Receiver-general Fauconnier's accounts, he certainly rendered such inspection useless by refusing to submit his vouchers.<sup>6</sup> There is no doubt that the position assumed by him, that the receiver-general was directly responsible only to the English treas-

<sup>1</sup> Their vessel was lost at sea.

ury, was the original one of the home authorities, but the latter certainly had no desire to conceal from the provincials the nature of the financial transactions of the colony.<sup>1</sup> When, after a lengthy struggle, the assembly was at length enabled to conduct a careful examination of Fauconnier's accounts, they were found unsatisfactory,<sup>2</sup> and Hunter, upon the advice of the representatives, caused his prosecution.<sup>3</sup>

With regard to the enforcement of his control over trade, there was not so much ground for complaint. But this was due to the fact that New Jersey really had no trade except with New York and Philadelphia.<sup>4</sup> Cornbury did nothing to encourage trade, nor did he make any very serious effort to furnish the board of trade with the information regarding it which they desired. No determined effort was made by him to prevent smuggling. Indeed, the only noteworthy act of Cornbury and his council regarding trade was the granting of the sole right to carry goods on the road from Burlington to Amboy, to Hugh Huddy, later a member of the council.<sup>5</sup> This act was complained of by the assembly as the granting of a monopoly.<sup>6</sup> Cornbury, in his reply to the charges of 1707, declared that it had had a most beneficial result, and that, by enabling all persons to dispatch goods once a fortnight at fixed rates, a trade between Philadelphia, Burlington, Amboy, and New York, had been created.<sup>7</sup> But the assembly returned to the attack, maintaining, in words which would have delighted

<sup>1</sup> *New Jersey Archives*, vol. ii, p. 515.

<sup>2</sup> *Assembly Journal*, Jan. 25, 1710-11.

<sup>3</sup> *Minutes of the Supreme Court (1704-1715)*, p. 131.

<sup>4</sup> *New Jersey Archives*, vol. v, p. 21; vol. iv, p. 450.

Manchester economists, that perfect freedom of trade was alone beneficial.<sup>1</sup>

Two other executive acts relating to a different field also gave rise to much complaint. Cornbury allowed the provincial secretary to maintain his office at Burlington alone,<sup>2</sup> and the only office for the probate of wills was kept at the same place.<sup>3</sup> Thus all having business in these offices, even from distant parts of East Jersey, were compelled to make the long journey to Burlington. When these abuses were brought forcibly to his attention, Cornbury would allow no change.<sup>4</sup>

But it was the governor's dealings with the proprietors which, after all, aroused the bitterest feelings. When the proprietors had surrendered to the crown, it had been done, of course, with the understanding that their rights to the land should be guaranteed, and the governor's instructions relating to his dealings with the proprietors had been prepared to carry this understanding into effect. Morris and other proprietors indeed declared that the surrender had been made upon definite conditions.<sup>5</sup> This assertion was, however, directly denied by the lords of trade. They admitted, nevertheless, that the crown desired to protect the just interests of the proprietors, and that the instructions had been prepared with this object in view.<sup>6</sup> In any case Cornbury should of course, have been bound by his instructions. But, though he was able in a certain sense to keep within the exact words, he violated their spirit most directly and shamelessly.

<sup>1</sup> See Cornbury's letter to the Lords of Trade, April 17, 1702.

jority in East Jersey, represented by Morris, Gordon, Johnstone, and Willocks. Cornbury recognized Gordon as the register of the East Jersey proprietors, and Barclay as the collector of the quit-rents, and, following his orders to aid the proprietary agents, he had issued a proclamation to the inhabitants in behalf of the latter.<sup>1</sup>

After the collection of the "Blind Tax," however, this co-operation was exchanged for bitter hostility. Yet Cornbury was obliged to appear to assist the proprietors. He therefore recognized the opposing minority element among the East Jersey proprietors, the clique of Dockwra and Peter Sonmans, as being the rightful proprietary authority.<sup>2</sup> Previous to the surrender and before his quarrel with Willocks, Wm. Dockwra had been commissioned as a sort of general agent by the proprietors in London, and documents signed by him had been recognized as valid, just as if signed by a majority of the share-holders.<sup>3</sup> He had also been for a time secretary and register,<sup>4</sup> as well as collector of quit-rents, exercising his powers, however, by deputy, since he had not removed to East Jersey. After his exposure by Willocks, however, Dockwra's powers had been suspended by the council of East Jersey, and all records handed over to Thomas Gordon, his former deputy.<sup>5</sup> Dockwra and his supporters, nevertheless, did not recognize this deposition. Accordingly, in 1705, Dockwra commissioned Peter Sonmans as agent of the proprietors, giving him the power to sell the proprietors' lands and to collect their

<sup>1</sup> *Liber AAA of Commissions*, p. 31.

<sup>2</sup> *Nova Invenio Archivas* vol iii p. 180

quit-rents.<sup>1</sup> This commission also suspended the council of proprietors and declared their acts void.

Cornbury forthwith recognized Sonmans. He immediately recalled his previous proclamation in favor of Barclay as receiver-general of quit-rents, and issued another in favor of Sonmans.<sup>2</sup> Further, he annulled the power of Gordon as register, and, in spite of his efforts to avoid the issue, compelled him to surrender the proprietary records to Secretary Basse,<sup>3</sup> from whom they passed to Sonmans. For his disobedience in the matter Gordon, as we have seen, was arrested and subjected to long-continued and unjustifiable persecution. As Sonmans was the bitter enemy of the Perth Amboy clique, the making-over of the records to him was the greatest injury Cornbury could do them. Sonmans, it is claimed, carried the records out of the province,<sup>4</sup> and perhaps actually did conceal or make away with a part of them. So effective was Sonmans as an ally, that he was soon in high favor with the governor, and at his instance was appointed to the council. The net result was the virtual destruction for the time being of the rights of the legitimate proprietors and their council.

The alliance with Sonmans naturally led Cornbury into further difficulties. Arent Sonmans, father of Peter, had owned five and one-fourth proprietries in East Jersey, that is to say, more than one-sixth of the province. The inheritance of this large interest was in dispute, for whereas Peter claimed the whole, a counter claim was entered by Joseph Ormston, of London, merchant, son-in-law of Arent Son-

<sup>1</sup> *Liber AAA of Commissions*, p. 38.



mans, as trustee for Peter and his two sisters.<sup>1</sup> Now, as Ormston possessed influence, he succeeded in obtaining a royal order through Harley, secretary of state, commanding Cornbury to pass a grant confirming his rights under the seal of the province.<sup>2</sup> The order was brought to Cornbury by John Ormston, brother of Joseph, but the governor delayed upon various pretexts, until Peter Sonmans could issue a caveat against the grant; then he delayed further on similar trivial grounds, and thus virtually nullified the royal order.<sup>3</sup> Ormston's cause was at once taken up by the opponents of the governor, and became one of the long list of grievances.

An even more serious blunder on the part of Cornbury was his undertaking to charge fees for the patenting of proprietary lands.<sup>4</sup> This abuse, however, was soon stopped by an additional instruction.<sup>5</sup>

Cornbury's relations with the proprietors of West Jersey were even more outrageous. His conduct was no doubt due to the advice of Coxe, and he was the more easily persuaded because of his dislike of Quakers in general and Jennings in particular, and of Morris, the agent of the West Jersey Society.<sup>6</sup>

In 1706 he suddenly called upon the council of West Jersey proprietors to show the authority by which it pretended to act.<sup>7</sup> In reply the council submitted a statement

<sup>1</sup>The claim of Ormston was based upon the assertion that Arent Sonmaas had [died an alien, and that his rights had reverted to the Queen by whom they were given in trust to said Ormston.

<sup>2</sup>*Liber AAA of Commissions*, p. 71.

<sup>3</sup>*New Jersey Archives*, vol. iii, p. 161.

<sup>4</sup>*Ibid.*, vol. iii, p. 92.

<sup>5</sup>*Ibid.*, vol. iii, pp. 98, 118.

of its origin, composition and method of election, as well as of its duties.<sup>1</sup> But Cornbury had already enjoined it from taking any further steps whatsoever, upon the ground that his instructions ordered him to allow the agents of proprietors to act only upon condition of their taking the oath of allegiance to the crown; and as the members of the council were not under oath, they must be disbanded.<sup>2</sup> This action on the part of Cornbury reached the limit of absurdity and malice. By it he destroyed the rights of the owners of West Jersey as effectually as he had those of the proprietors of the sister province, for without their council the operations of the proprietorship of West Jersey were paralyzed.

By these outrages, though they were successful for a short time, Cornbury stirred to action the ablest and most influential men of the province, as well as such powerful persons as Paul Dominique and Edward Richier in London. Numerous protests and representations were sent to the home authorities by the proprietors of the two divisions,<sup>3</sup> and in the assembly they took the lead in the conflict with the governor. It was undoubtedly the influence of the proprietors which contributed most of all to Cornbury's downfall.

In one respect at least Cornbury was forced by circumstances to have regard to his instructions. The continued complaints and addresses made to the crown and the lords of trade forced him to write frequently to the home authorities, and to give them at least some information regarding

<sup>1</sup> *New Jersey Archives*, vol. iii, p. 220.    <sup>2</sup> *Ibid.*, vol. iii, pp. 178, 192.

<sup>3</sup> The West Jersey Society took the leading part although Dominique, Bridges and Michel had petitioned the Lords of Trade to prevent the Council of West Jersey Proprietors from proceeding independently of the society.

conditions in the province.<sup>1</sup> Whether Cornbury himself was the real author of these communications is, of course, doubtful. In any case they display ignorance, in some instances at least not creditable to a governor.<sup>2</sup> The motive throughout was to justify his lordship's policy, and Cornbury did not hesitate to misrepresent his opponents, especially the Quakers, and to conceal facts deliberately when it was his interest to do so. All things considered, it seems to the modern student rather remarkable that the home government did not see through his shallow excuses more readily than seems to have been the case. Cornbury, however, had an efficient ally in Quarry, whose letters placed the governor's acts in the most favorable light. Cornbury also had the advantage of employing a personal agent, one Mr. Sloper, to make direct representations in answer to complaints.<sup>3</sup>

Yet in the end the board of trade decided nearly all the questions at issue against Cornbury. His earlier recommendations regarding appointments were in most cases approved, but Morris was restored to the council,<sup>4</sup> and his lordship was directed to cease meddling with elections to the assembly. He was also told not to charge fees for the patenting of proprietary lands,<sup>5</sup> and was instructed to return to the proprietors all records which did not relate directly to the government.<sup>6</sup> When Lovelace was commissioned in Cornbury's place, he received a communication from the lords of trade condemning many things which the late governor had done. Persons convicted of wilful murder were

<sup>1</sup> Yet in Feb., 1706 the Lords had received no minutes of the Council or Assembly; *New Jersey Archives*, vol. iii, p. 128.

to be reprieved only until the pleasure of the crown was ascertained. Costs were not to be levied upon accused persons unless indictments were actually found. The patent given to Hugh Huddy was declared a monopoly. No fee was lawful unless warranted by prescription or enacted by the legislature. The establishment of an office for the probate of wills in East Jersey, moreover, was not to be held a danger to the prerogative.<sup>1</sup>

Throughout, the British authorities showed every desire to give justice even against Cornbury, but the vexatious delays inherent in the colonial system of the eighteenth century rendered their decisions tardy in the extreme. The final removal of his lordship, though too long delayed, was a real proof of this wish. It may be noted here that Cornbury was the only royal governor actually removed during the entire Union Period.

The administration of "the good Lord Lovelace" was too brief to allow of the thorough-going reform of the executive department which the circumstances of the case urgently demanded. From the beginning, however, the new governor showed every inclination to give New Jersey an honorable rule, and to carry out his instructions in the spirit in which they were intended.<sup>2</sup>

In his first official letter Lovelace informed the lords of trade that he had ordered the proper officers to transcribe fair accounts of the minutes of the council and assembly, also lists of the vessels entered and cleared, and accounts of the revenue during Cornbury's time. Lovelace said, however, that it would be difficult, if not impossible, to give

The only governmental matter of importance during Lovelace's time was the session of the council and assembly of March and April, 1709. In this session, despite the fulsome flattery with which he had been welcomed by the corrupt ring in the council, Lovelace showed a decided inclination to favor their opponents.<sup>1</sup> This led the assembly, as we shall see, to attack the chief advisers of the late governor in addresses to both the crown and the governor. The chief effort was leveled against Sonmans,<sup>2</sup> who was accused of numerous tyrannical and unjust proceedings in the courts. The old clique of favorites was apparently both alarmed and angered. The answering addresses, prepared by both Ingoldsby and the council<sup>3</sup> and by Sonmans personally,<sup>4</sup> though decidedly defensive in tone, heaped blame upon Morris and the Quakers, and even mildly reproved the governor for having listened to the advice of the Scotch proprietor, George Willocks. Willocks was declared to have instigated the assembly in its opposition to the late governor, and the fact that he was "a high flowne" Jacobite was paraded to prove his dangerous character. Sonmans defended his conduct elaborately in a clever, but specious, document, which only confirms our opinion that he was an able but unprincipled adventurer.

But though the corruption of Cornbury's time was abruptly checked, Lovelace did not remove many of the guilty persons from office.<sup>5</sup> At the urgent request of the assembly, he substituted Miles Forster for Fauconnier as receiver-general "and treasurer" of New Jersey, the latter

<sup>1</sup> *New Jersey Archives*, vol. iii, pp. 364, 367.

<sup>2</sup> *Ibid.*, vol. iii, p. 375 *et seq.*

<sup>3</sup> *Ibid.*, vol. iii, p. 390 *et seq.*

title indicating that he was to be held strictly accountable to the assembly.<sup>1</sup> The governor also said he would order Fauconnier to attend the assembly and submit his vouchers when he could be found. Mompesson was superseded as chief justice by Thomas Gordon.<sup>2</sup> But Basse and Griffith, the attorney-general, secure in their royal patents, remained in office.

The unfortunate death of Lovelace prevented further developments, for Richard Ingoldsby, the lieutenant-governor, who, after some hesitation, was recognized by the assembly as the legitimate executive until a new governor should be commissioned, was himself a member of the clique of Coxe, Sonmans and Pinhorne. His accession renewed the old executive abuses to some extent, yet his rule was brief, and, owing to the tentative character of his power, he was less bold than Cornbury. The most immediate result of the change was the escape of Sonmans and Basse, who had been indicted for their crimes, but who were now acquitted by packed juries.<sup>3</sup> Gordon, the new chief justice, was at once replaced by Mompesson.<sup>4</sup>

Ingoldsby performed the usual executive acts, naming judges, justices, sheriffs, and officers of the militia. He called and presided over three sessions of the assembly, two of which were summoned for the purpose of providing for the raising of New Jersey's quota of men for the Nicholson-Vetch expedition against Canada. In connection with this work, Ingoldsby and his council endeavored to force the Quakers into a position of disobedience to the queen, be-

<sup>1</sup> *Assembly Journal*, March 24, 1708; *New Jersey Archives*, vol. xiii, ---

cause of their scruples against the employment of soldiers for any purpose.<sup>1</sup> The lieutenant-governor commissioned John Harrison and Jacob Spicer as captains of the two companies of "fuzilleres" raised for the expedition,<sup>2</sup> and also gave a commission to a privateer.<sup>3</sup> With his council, he issued a patent for St. Mary's Church at Burlington.<sup>4</sup>

Ingoldsby sent communications to the home authorities, in which he stated that he had assumed the administration and asked to be continued, because he had performed meritorious service and had received little salary.<sup>5</sup> But the important laws passed under Lovelace were not forwarded to England.<sup>6</sup> Ingoldsby declared later that he knew nothing of them, and believed that Lady Lovelace had burned them with her husband's other papers. Basse, the secretary, was also unable to produce them, though it appeared that the printed copies had been taken from the originals. The disappearance of the acts was a little suspicious, because Ingoldsby procured from the Fifth Assembly an act giving him a large part of the salary voted for Lovelace. Thus the queen could not pass on the two appropriation laws separately.

With his satellites, Ingoldsby returned to the attack upon Morris, Willocks and Gordon, the first of whom he ventured to suspend again from the council.<sup>7</sup> The result was, however, not what he anticipated, for the lords of trade, after investigation, decided that he was not entitled to the administration in New York, as his commission as lieutenant-governor for that province had been ordered revoked in

<sup>1</sup> *New Jersey Archives*, vol. iii, p. 470.

<sup>2</sup> *Liber AAA of Commissions*, pp. 103, 104.

1706, though it was not certain that the order had been signed by the queen.<sup>1</sup> They forthwith prepared a new order revoking his commission for New Jersey also, and commanding him to give up the administration immediately.<sup>2</sup> Though the reason for this action was not directly stated, it is fair to suppose that the lords were determined not to permit a continuance of the abuses within the province.

The appointment of Hunter gave New Jersey for the first time a strong and able executive. The new governor was also a man who, while by no means forgetful of his own interests, was not eager for a parade of power, and who was capable of understanding the point of view of the colonists. Hunter took no decided steps until experience, derived from his relations with the council and assembly, gave him opportunities to judge at first hand the real cause of the evils of the provincial government. As in the case of Lovelace, the ring in the council endeavored to gain the favor of the new executive by an ultra-loyal address.<sup>3</sup> But Hunter was unmoved, and after the first session of the legislative bodies in which both the past corruption of the administration<sup>4</sup> and the present unscrupulous maneuvers of the council were thoroughly revealed, he determined to uphold the proprietary party and to destroy the influence of their opponents as the only means of bringing peace to the province.

He therefore recommended that Coxe, Sonmans, Pinhorne and Hall be removed from the council,<sup>5</sup> and after the usual vexatious delay, while the lords of trade examined the matter, this was done.<sup>6</sup> Meanwhile Mompesson, whom



more leniently than the other members of Cornbury's clique, voluntarily surrendered his position of chief justice, and was succeeded by David Jamison,<sup>1</sup> a lawyer of good reputation, though a resident of New York. Somewhat later Hunter commissioned Thomas Farmar as second judge.<sup>2</sup> Thomas Gordon was made receiver-general "and treasurer."<sup>3</sup> John Johnstone and John Hamilton, son of Andrew Hamilton, the last proprietary governor, became colonels of the militia. Thus the power of the old ring was effectually shattered, though Griffith, the attorney-general, and Basse, the secretary, secure in their patents, retained office for some time. Hunter's appointees were nearly all prominent proprietors and Scots. In a certain sense they undoubtedly constituted a new governmental clique; but, though not all of them were above reproach as politicians, they were at least a great improvement upon their predecessors.

It is important to note a change since the time of Lovelace in the governor's relation to the receiver-generalship. Miles Forster had, of course, continued to hold the office of provincial receiver-general under Ingoldsby. But when the assembly had raised funds for the Nicholson-Vetch expedition, it named in the act separate treasurers to handle these moneys, different persons being chosen for East and for West Jersey. Miles Forster was designated as treasurer for East Jersey, but Dr. John Roberts was given charge <sup>V</sup> in the western division. Upon the death of Forster, Governor Hunter appointed Dr. Johnstone, J. Billop, and William Bradford, to act as commissioners in his room.<sup>4</sup>

<sup>1</sup> *New Jersey Archives*, vol. iv, p. 70.

When, in 1711, under Hunter, the assembly made provisions for New Jersey's contingent for the second Canada expedition, it again named treasurers for the special handling of the sums raised,—Gordon for East Jersey, and Thomas Gardiner for West Jersey. Gordon and Gardiner were duly commissioned by Hunter to perform the services required.<sup>1</sup> These special treasurerships were, however, distinct from the regular provincial treasurership, to which Hunter had named Gordon as a person distinctly acceptable to the assembly.

Hunter also allowed the assembly to investigate fully the work and to fix the accountability of all financial officers. As a proof of this decision, he allowed that body to see the bond of Fauconnier, the late receiver-general, a privilege for which it had formerly striven in vain,<sup>2</sup> and when the former receiver-general's accounts were found defective,<sup>3</sup> directed his prosecution.<sup>4</sup> At the end of his administration, when, owing to an error in book-keeping, the accounts of Gordon likewise appeared to be unsatisfactory, Hunter asked the house whether he should prosecute or not.<sup>5</sup> He also promptly complied with the wish of the assembly that there might be two distinct provincial treasurerships,<sup>6</sup> naming Jeremiah Basse for West Jersey,<sup>7</sup> and William Eires for

<sup>1</sup> *Liber AAA of Commissions*, p. 134. Upon the death of Gardiner, Dr. Roberts was again appointed, *ibid.*, p. 147.

<sup>2</sup> *Assembly Journal*, Jan. 8, 12, 1710-11.

<sup>3</sup> *Ibid.*, Jan. 25, 1710-11.

<sup>4</sup> *Minutes of the Supreme Court (1704-1715)*, p. 131.

<sup>5</sup> *Assembly Journal*, March 27, 1719. The House replied that the accounts had only been found inconsistent and therefore it did not as yet desire prosecution.

East Jersey, in room of Gordon. Hunter thus initiated a policy which was regularly followed by his successors.

In spite of the removal of their colleagues, both Griffith and Basse gave the governor further trouble. Their continued opposition seems to have been due, however, to the encouragement of Col. Coxe, who openly assumed the leadership of the elements hostile to Hunter. Griffith, through intentional neglect, rendered the prosecution of Peter Sonmans abortive, and allowed him to escape from the province with the proprietary records. He virtually refused to begin proceedings against Daniel Leeds and other offenders, thus thwarting the endeavor of the governor to bring some of Cornbury's henchmen to justice. At length, in January, 1714-15, the conduct of the attorney-general was considered by the governor and council, and Griffith was suspended. Thomas Gordon was appointed as commissioner to execute the office till the pleasure of the crown was known.<sup>1</sup>

Basse, the secretary, gave even more trouble. He not only refused to obey Hunter's direct orders to qualify Thomas Gardiner, the prominent Quaker leader, as surveyor-general of West Jersey, on the old pretext that he would not take the oaths,<sup>2</sup> but also coöperated with the tools of Coxe, who for the time being controlled majority sentiment in Burlington County, in indicting Jamison, the new chief justice, Col. Lewis Morris, and Gordon, the new attorney general, for allowing Quakers to serve upon grand juries.<sup>3</sup> These indictments were, of course, soon quashed,<sup>4</sup> but formed a part of the policy of obstruction with which Coxe assailed Hunter.

At this juncture the death of the queen brought a new complication, for it was now necessary for all royal officers to be recommissioned. Coxe and his supporters at once exerted all their influence in England to prevent the issue of a new commission to Hunter. Representations against Hunter were made by Dr. Daniel Coxe, the former proprietor of West Jersey,<sup>1</sup> by Cornbury, now Earl of Clarendon,<sup>2</sup> and others. But the new governor had been too useful. Not only was a new commission granted, but his administration received the direct approval of the crown.<sup>3</sup>

And indirectly, also, the change of sovereigns proved helpful to Hunter, for Basse, against whom the governor had naturally made outspoken complaints<sup>4</sup> to the lords of trade, was superseded as provincial secretary by James Smith.<sup>5</sup> This downfall of Basse brought an interesting result. Threatened by further disaster, the ex-secretary apparently made up his mind that Hunter would be successful in controlling the province, and not only ceased from opposition, but gradually acquired the governor's confidence. When chosen to the assembly, he proved a useful member,<sup>6</sup> and eventually, in 1719, was named by Hunter himself as Gordon's successor as attorney-general and also as treasurer of West Jersey.<sup>7</sup>

It was not alone the leading executive positions which were refilled by Hunter. As a part of his war upon the supporters of Cornbury, he removed all the members of the old

<sup>1</sup> *New Jersey Archives*, vol. iv, pp. 198, 203.

<sup>2</sup> *Ibid.*, vol. iv, p. 199.

<sup>3</sup> *Ibid.*, vol. iv, pp. 202, 215, 327.

<sup>4</sup> *Ibid.*, vol. iv, pp. 139, 172, 209, 234.

<sup>5</sup> *Ibid.*, vol. xiv, p. 2.

<sup>6</sup> The speech made by Basse in Jan. 15, 1716-7 regarding the financial situation is the only speech during the period reported at length in the *Assembly Journal*.

<sup>7</sup> *Liber AAA of Commissions*, Mar. 28, 1719.

dique from their offices as associate provincial justices and as county judges. Hunter maintained that this was the only method of purifying the courts and of restoring to the province the right of *bona fide* appeal.<sup>1</sup> Such sheriffs, justices of the peace and militia officers as had been conspicuously identified with the party of Cornbury and Coxe were also replaced. It was one of the complaints made against Hunter by his enemies that many of his removals were arbitrarily made, without reason stated.<sup>2</sup> But this objection could have deceived no one who knew the circumstances. On the other hand, the governor gave over the whole machinery of the government to the adherents of the proprietors. With his appointees in power, no movement hostile to them had the slightest chance of success.

Not only were Hunter's chief opponents removed from places of trust, but most of them soon ceased for other reasons to be factors in provincial affairs. Mompesson and Townley died not long after their overthrow.<sup>3</sup> Sonmans fled from the province, while Coxe, after expulsion from the assembly, betook himself to England to attack Hunter before the home authorities. His influence in the province was still considerable, however, and he reappeared in the next administration to engage in new conflicts. Pinhorne retired into private life. Owing to the disobedience of Griffith and the disappearance of Sonmans and Coxe from New Jersey, Hunter's efforts to bring the members of Cornbury's ring to justice failed. Fauconnier alone underwent a lengthy prosecution, and even he seems to have

drive their opponents from power than to take personal vengeance.<sup>1</sup>

The closest advisers of Hunter seem to have been Morris, for whom he had special regard; Dr. Johnstone, so long prominent in proprietary affairs; James Alexander, who had recently arrived from Scotland, but who was destined to play a leading part for many years in all proprietary matters; Thomas Gardiner, the brave Quaker, while he lived; and Col. Farmar, of Middlesex.<sup>2</sup>

So far we have been considering the use made by Hunter of the power of appointment and removal alone. Though this was, as must always be the case, the lever controlling the governor's other duties, we must now notice a little more carefully the work of Hunter in other fields.

There is little in Hunter's exercise of his judicial powers to need comment in this section, especially as the judicial system will be made the subject of more detailed study later. Hunter issued a new ordinance for constituting and regulating the courts, but it did little more than repeat the excellent provisions of Cornbury's original ordinance.<sup>3</sup> The condition of the courts under Hunter was an especially important matter, since he had announced it as the key-note of his policy that all disputes regarding property should be decided judicially,<sup>4</sup> and a test case regarding the validity of the claims of the proprietors to unpatented portions of the Elizabethtown tract was brought and came to an issue before the Supreme Court in 1718.<sup>5</sup> Under Hunter's admin-

<sup>1</sup> The case of Basse is an illustration.

<sup>2</sup> *New Jersey Archives*, vol. iv, p. 119.

<sup>3</sup> Field, *op. cit.*, appendix D, p. 263.

<sup>4</sup> *New Jersey Archives*, vol. iv, p. 119.

istration the decision in favor of the proprietors was, of course, to be expected, but there is not the slightest direct evidence to show that the proceedings were in any way unfair. In general, the courts seem to have met regularly and quietly, to have observed the laws and customary usages, and not to have laid themselves open to charges of injustice and corruption.<sup>1</sup> Hunter himself did not interfere with the action of the courts, setting in this respect an excellent example for later executives.

Hunter, for really the first time, gave the Jerseys a militia system which did not cause continual complaint. This was organized by the governor under a new militia act, the passage of which was secured as soon as Hunter had overthrown the obstructive ring which opposed him.<sup>2</sup> The new arrangement permitted the Friends to escape military duties on the payment of reasonable fines. The enforcement of the act appears to have been left by Hunter to the militia officers and the local authorities, upon whom they were authorized to call. Under the circumstances it could not be expected that the militia would reach any very high degree of efficiency,<sup>3</sup> but the conclusion of the long war with France made this a matter of less importance than formerly. Hunter deserves at least credit for putting the system upon a permanent footing, and removing the abuses of Cornbury and Ingoldsby's time, even if he did not achieve the impossible task of making the Quakers of West Jersey into formidable troops.

In ecclesiastical affairs, however, Hunter found peculiar difficulties. This was partly because, though himself a

Churchman,<sup>1</sup> he was a moderate, not in sympathy with violent and coercive efforts to extend the authority of the Church of England, and partly because the political circumstances of the province had caused him to identify himself with a party composed largely of Dissenters and Quakers, or at least of persons sure to be represented as such by their opponents.<sup>2</sup> The power of the governor to collate to benefices meant little in New Jersey, as the supply of clergymen sent by the Society for the Propagation of the Gospel was always insufficient to meet the demands of the several congregations which had been formed in various parts of the province. During Hunter's time only four Anglican clergymen were regularly settled in the province. These were Edward Vaughan at Amboy, Thomas Halliday at Elizabethtown, Dr. Inness in Monmouth, and the able and energetic Talbot at Burlington.

The ring of favorites who had surrounded Lord Cornbury had made great protestations of zeal for the Church. It was natural, therefore, that Cornbury's clique should find support from some of the clergy. In Monmouth, where the church had been built up partly by the influence of Col. Lewis Morris, there was naturally no difficulty. But in Amboy Mr. Halliday was an adherent of Cornbury and especially friendly to Peter Sonmans. This fact caused trouble between the missionary and Willocks, Gordon, and other prominent proprietors who were members of the parish and hostile to Sonmans. Finally, in 1713, Halliday denounced Willocks from the desk for misappropriating funds of the church. The result was the virtual expulsion of the clergy-



man by his parishioners, though he persisted in remaining at Piscataway and officiating in other neighboring places.<sup>1</sup> Hunter, though annoyed, apparently took no official notice of the matter.

Very different, however, was his attitude toward Rev. John Talbot, of St. Mary's, Burlington. This church, which had prospered greatly under the energetic rectorship of Talbot, was the chief center of opposition to Quakerism in West Jersey.<sup>2</sup> Among its prominent members were Col. Daniel Coxe, Secretary Basse, and Alexander Griffith, and Hunter soon came to regard St. Mary's as an organization of his opponents. He was especially bitter against Talbot himself, whom he knew to be using his influence in support of Col. Coxe. He accused Talbot and his parishioners of being Jacobites, and said that Talbot, by organizing them as a church, had consecrated their treason.<sup>3</sup> This charge was transmitted by the lords of trade to the Society for the Propagation of the Gospel, by whom it was sent to Talbot for an answer. The denials drawn up by Talbot, Basse, and the church wardens<sup>4</sup> seem to have been received as satisfactory, however, as the society took no action. Hunter's complaints against the aid given by the energetic missionary to his opponents nevertheless continued, and furnish good evidence that Talbot was a power in West Jersey.<sup>5</sup> To Hunter's appeals the lords of trade eventually responded by informing the Bishop of London that complaints had been made by Hunter and

<sup>1</sup> Whitehead, *Contributions to the Early History of Perth Amboy*, pp. 216-7.

other royal officers against his missionaries,<sup>1</sup> but they took no active steps to right matters.

The governor was therefore forced to take action himself and in May, 1716, the case of Talbot was considered by the council.<sup>2</sup> That body, now entirely in the hands of Hunter's friends, held Talbot's conduct to be that of a Jacobite and an inciter of disorder in the province. An order was therefore sent to the sheriff of Burlington to administer the oath of allegiance to the troublesome missionary, and, in case he refused, to prevent him from exercising his functions further, and to arrest him and hold him in custody until he gave security for good behavior.<sup>3</sup> These means, appear to have been effective in silencing Talbot.

The passing-away of the political animosity aroused by the fight of Col. Coxe against the governor, and probably the wish to resume work at St. Mary's, soon led Talbot, however, to desire a change in his relations with Hunter. At any rate, a reconciliation between him and the governor was finally effected through the influence of their mutual friend, George Willocks, himself an avowed Jacobite.<sup>4</sup> Talbot, according to Willocks' statement, admitted his errors, apologized for what he had done, and promised to meddle no more in politics. After the reconciliation, he resumed his duties at St. Mary's and continued the labors which have justly caused his name to be remembered with honor.

Another clergyman who embarrassed Hunter was Mr. Vesey, of New York, who was eventually named by the

plained of his conduct to the board of trade.<sup>1</sup> At the same time, however, he declared that Vesey had no power to do him serious harm.<sup>2</sup>

During the early part of his administration Hunter was also troubled by Rev. Jacob Henderson, a missionary of Pennsylvania, and evidently a sympathizer with Talbot and Coxe. In 1712 Mr. Henderson made a representation to the home authorities stating that the removal by Hunter of Cornbury's friends in the council was really an attack upon the Church of England.<sup>3</sup> Coxe, Sonmans, and their confederates were represented as zealous churchmen, while Morris was said to be a man of no principles, and the six persons recommended for the council were denounced as Dissenters, Quakers, and men of ill character. Henderson reached the height of absurdity when he said that John Harrison, one of the new councillors, was believed upon good authority to have been brought up by "one Kid, a Pirate." It was also said that Hunter did nothing to encourage the Church, and that as a result Anglicanism was at a low ebb in the Jerseys.

As a result of the high church attack, the board of trade consulted the Bishop of London regarding the character of those recommended by Hunter for the council vacancies.<sup>4</sup> The accusations were, however, effectively answered by one of Hunter's friends, probably Morris,<sup>5</sup> and were too palpably groundless to injure those whose characters were assailed. The changes in the council were forthwith approved by the bishop.

With the exception of the case of Talbot, Hunter avoided

interfering directly with the Church,<sup>1</sup> contenting himself with making representations to the board of trade which he knew would be presented to the Bishop of London. This course was certainly a wise one, for, even as it was, Hunter had been represented as attacking the Anglican missionaries in the interests of Quakers. The matter is again an illustration of what we may call Hunter's negative wisdom. He usually knew well what not to do.

In the financial field Hunter's policy has been to some extent indicated. While carrying out scrupulously the form of his instructions, he simply acquiesced in complete practical control of the treasury by the assembly. He named "treasurers" agreeable to the assembly; he allowed the strictest auditing of their accounts; and at the close of his administration he even declared that, as the assembly had assumed control of the finances, he would follow its advice about the prosecution of Thomas Gordon, treasurer of the province, whose accounts had been judged unsatisfactory.<sup>2</sup> By taking this position Hunter again avoided difficulties, yet he did so by the practical surrender of a most important field to the representatives.

The attitude of Hunter toward the trade of the province permits of no lengthy discussion. He, of course, permitted the royal customs officers to discharge their duties, but apparently made no very energetic efforts to assist them. We have no evidence that he submitted any account of negroes imported, and in answering a set of questions transmitted to him toward the close of his administration, he

and a few coasting sloops made up the entire marine of the province.<sup>1</sup> In this field, as well as others, Hunter was content to leave things as they were.

In his attitude toward the proprietors Hunter, of course, reversed entirely the policy of Cornbury and Ingoldsby. Yet he aided the legitimate owners of the province rather by giving them control of the legislative department of the government, through the ousting of their foes from the council and defeating the efforts of Coxe to control the assembly, than by direct interference in proprietary affairs. The moral support of the governor meant a great deal, however, to Morris and his party.

The first object of the proprietors after regaining influence was naturally to depose Peter Sonmans from the position as agent and collector-general of quit-rents, which through Cornbury's aid, he had usurped, to recover the proprietary records, and to punish him for his conduct. But Sonmans, on learning that complaints against him had been brought to the attention of Hunter, fled from the province, carrying the records with him. Meanwhile a warrant for the apprehension of Sonmans had been issued by the chief justice. But soon afterward the trunk containing the records fell, by design Hunter believed, into the hands of Basse, who was deputy surveyor of customs at Burlington. Basse for the time being refused to part with them.<sup>2</sup> But they were later made over by order of Hunter in council to Thomas Gordon as the properly constituted register.

In 1715, however, the matter was more definitely settled, for when Basse was replaced by James Smith as secretary of the province, the latter produced a commission as pro-

province. At the same time James Alexander, later so prominent in the affairs of both New York and New Jersey, laid before the council a similar commission as surveyor-general of East and West Jersey. A royal letter approving the proprietary appointment of Smith and Alexander was also submitted, and the governor and council forthwith issued a proclamation forbidding all other persons to exercise the said offices.<sup>1</sup>

The defeat of Sonmans naturally led to the long deferred victory of Joseph Ormston, in spite of the efforts of Attorney-General Griffith to hinder. The case was, in March, 1713, brought before Hunter and council on a petition from Willocks, acting as attorney for Ormston. As a result, the council ordered that a grant of the lands formerly held by Arent Sonmans be made to Ormston in due form, as required by the queen's letter to Lord Cornbury.<sup>2</sup>

With regard to the West Jersey proprietorship, Hunter had to face a slightly different situation. Upon the accession of Lovelace the council of proprietors had resumed its operations.<sup>3</sup> Lewis Morris, the agent of the West Jersey Society, became president of the council, and Thomas Gardiner was again surveyor-general. But in the fall of 1711 Basse, as secretary of the province, although directly commanded so to do by Hunter,<sup>4</sup> refused to qualify Gardiner for his office, on the ground that he would not take the required oath, and also because his selection had not been assented to by all the proprietors of West Jersey.<sup>5</sup> The situation was now further complicated by the capture of the

<sup>1</sup> *New Jersey Archives*, vol. xiv, pp. 2-3.

<sup>2</sup> *Ibid.*, vol. xiii, pp. 542, 554-5.

council of proprietors itself by Coxe and his supporters, which occurred in 1712.<sup>1</sup> Daniel Leeds, Coxe's old tool, was at once joined with Gardiner in the post of surveyor-general, and further complications resulted.

But upon the defeat of Coxe in his political campaign against Hunter and his flight from the province, the Quaker interest again dominated in the proprietorship. Upon complaint by Thomas Byerly, the proceedings of Leeds were considered by the governor and council, and he was removed from office and prosecuted by their order on the charge of altering the West Jersey Records.<sup>2</sup> In 1715, as has been indicated, the situation was at length simplified by the official recognition of James Smith and James Alexander, as register and surveyor-general, respectively, for West Jersey. Thus the situation existing before Cornbury's interference was reestablished, though not owing to any active intervention by Hunter himself.

In one department at least Hunter was active. This was in keeping up a constant communication with the board of trade and Secretary Popple. His letters certainly kept the home government fully informed as to the condition of politics in the Jerseys, as well as to the course of the governor himself. Hunter's correspondence is both clear and interesting, fully convincing the student of the governor's ability and literary attainments. As was to be expected, Hunter was outspoken in his attacks upon Coxe, Talbot and his other enemies, and no doubt failed to do justice to their motives and points of view. It must be remembered, however, that he was dealing with a dangerous political situation, and that his opponents were both annoying and un-

scrupulous. One noteworthy feature about Hunter's letters is certainly the very evident anxiety they display regarding the support of the home authorities.<sup>1</sup> Coxe and Dockwra possessed influence in England, and the governor had good cause for dreading defeat. The home government, to its credit, apparently never wavered in its attitude toward its able servant. Yet this fact could not be at once apparent. Hunter's feeling in the matter makes plain what was undoubtedly one of the chief obstacles with which provincial executives had to contend.

Hunter also transmitted regularly the journals of the houses and the acts of the assembly with comments. These were of course sometimes delayed, but never without proper reason.

Altogether, Hunter was in many respects the best executive New Jersey had during the Royal Period. He dealt with a most trying situation by the only means possible, and eventually brought the province to a condition of peace and prosperity. He kept his dignity under much annoyance, and, though not infallible, made few mistakes. His actions were seldom unjust and always reasonable. Still it cannot be denied that Hunter, to some extent, won success by sacrificing the position of the executive. In his hands the governorship tended to become rather the means by which the assembly executed its purposes, than the strong and leading factor in colonial affairs. Indeed, Hunter seldom employed his power at all when it could be avoided. Historically, this was the correct course, as it was in line with the ever-growing spirit of democracy and popular government. Yet Hunter handed over to his successor an execu-

<sup>1</sup> Burnet refers to Hunter's lack of support at home, *New Jersey Archives*, vol. xiv, p. 161.



tive power limited by precedent to a greater degree than it had been when he assumed office.

Governor Burnet had the advantage of Hunter's advice in beginning his administration, and naturally adopted the same general policy. He made no radical changes in the composition of the council, and retained many of Hunter's appointees in subordinate executive offices. Jamison was continued as chief justice and Basse as attorney-general till 1723, when James Alexander succeeded him. James Smith, of course, remained as secretary.

Burnet made no objection to the double treasurership which had been established after the resignation of Gordon. He named John Allen, who had served in the assembly, as a representative of the town of Burlington,<sup>1</sup> as treasurer of West Jersey, and, upon the death of Eires, appointed Michael Kearney, of Perth Amboy,<sup>2</sup> for East Jersey. Both of these men seem to have been thoroughly acceptable to the representatives, and performed their duties creditably. Some changes in the command of the militia are to be noted, but they do not seem, with one exception,<sup>3</sup> to have been of political significance.

Under Burnet's rule, feeling developed strongly against the continuance of officers who were not residents of the Jerseys.<sup>4</sup> For this reason, while not charging him with any offense, the assembly in November, 1723, requested Burnet to supersede Jamison.<sup>5</sup> Burnet readily complied, and nominated William Trent, then speaker of the as-

<sup>1</sup> *Assembly Journal*, March 7, 1721-2.

<sup>2</sup> Whitehead, *Contributions to the Early History of Perth Amboy*, p. 90.

sembly.<sup>1</sup> Upon Trent's sudden death a little later, Robert Lettice Hooper took his place.<sup>2</sup> Both of these appointments were of a high order, and neither gentleman had been to a great degree identified with any political faction.

Indeed, Burnet was able to improve upon Hunter by not committing himself quite so completely to one party. While rather favorable to the proprietors, he was not their partisan to the same extent as Hunter. Circumstances made such a change desirable, for under Hunter the old corrupt ring of Cornbury had been thoroughly destroyed, and Coxe, Sonmans and Dockwra reduced to comparative helplessness. It was therefore possible for the next governor to keep clear of party issues. The dying-away of the former bitter conflict is shown by the fact that Burnet even thought best to make Daniel Coxe colonel of the militia regiment of the new County of Hunterdon.<sup>3</sup>

Later in the administration a new danger to the political peace of the province appeared. While the old popular opposition to the proprietors at Elizabethtown and elsewhere had been taken advantage of by Coxe and Sonmans to advance their own ends, the real struggle under Cornbury and Hunter had been between Morris, the Amboy clique and the Quakers on one side, and their rivals for control of the proprietorship, aided by political spoilsmen like Basse and Ingoldsby, on the other. After the collapse of the efforts of Coxe and Sonmans and the establishment of peace, however, there came a revival of the old popular movement in East Jersey.

turb the peace of the province while Burnet was in control, though his general attitude enabled it to gain some headway.

But though Burnet continued the general policy of Hunter, he did not accept counsel from the same circle of advisers and friends. He remained on good terms with Morris and Alexander, it is true. But from the beginning he resented violently the interference of George Willocks in public affairs.<sup>1</sup> This soon brought upon him the secret opposition of Dr. John Johnstone, who was closely associated with Willocks. The reasons for the clash were, no doubt, partly personal, as Johnstone and Willocks were fond of power, while Burnet on his side could not keep his personality in the background, as Hunter had done, and actually rule while seeming to follow. Moreover, Willocks was an avowed Jacobite, a fact which appeared far more criminal to the scholar Burnet than to the soldier Hunter. But a stronger reason for the hostile attitude of Johnstone and Willocks toward Burnet was undoubtedly that the latter refused to lend himself to certain land-jobbing transactions and to a scheme which the pair of land speculators had taken up for incorporating the proprietors upon such terms as would give all the power to the Amboy group.<sup>2</sup>

Johnstone and Willocks possessed great political influence in both divisions, and caused Burnet much annoyance in his early dealings with the assembly.<sup>3</sup> In 1722, however, the governor succeeded in getting the assembly to pass an "Act for the Security of His Majesty's Government of New Jersey,"<sup>4</sup> which declared those who refused to take the

<sup>1</sup> *New Jersey Archives*, vol. v, pp. 11, 32.

<sup>2</sup> *Ibid.*, vol. v, p. 56 *et seq.*; p. 101.

<sup>3</sup> In consequence, Burnet had Willocks arrested as a person disaffected to the government and bound over to good behavior. *New Jersey Archives*, vol. xiv, p. 151.

<sup>4</sup> Allinson, *Statutes*.

oaths of allegiance to the king "Popish Recusants Convict," and liable to all the penalties established against such persons by the laws of England. Threatened by such a danger, Willocks was forced to leave New Jersey.<sup>1</sup> Johnstone, on the other hand, wisely gave up his concealed hostility to Burnet, after the latter had demonstrated his ability to maintain himself. In spite of the difficulties resulting, the quarrel probably had a good result. New Jersey had certainly been threatened with the formation of another executive ring, but the independence of Burnet prevented it from solidifying.

In his attitude toward the various fields of executive power, Burnet was much like Hunter, though he at first undoubtedly felt himself more closely bound by the letter of his instructions.<sup>2</sup> Three judiciary ordinances were issued upon his authority, though it is hardly to be supposed that he was actually their author.<sup>3</sup> The first, that of 1723, the "Ordinance of George II," was practically a copy of Mompesson's original work. This was followed by another, in 1725, which changed the time of holding some of the courts. In 1728 came, however, a more important ordinance, by which two supreme courts were really created, one to be held four times a year at Burlington, and the other four times a year at Amboy. This change was made in response to long-continued agitation in the assembly.<sup>4</sup> Burnet was said to have been especially fond of exercising his powers in chancery, and in 1724 issued the first ordinance for regulating fees in chancery.<sup>5</sup>

The judicial system seems to have worked very smoothly

creditable to the province.<sup>1</sup> There was the more need of a well-regulated judiciary, because issue upon the question of the Elizabethtown grants was soon again to be joined in the courts.

Burnet, following his instructions literally, was more active in military affairs than his predecessor,<sup>2</sup> in spite of the fact that active hostilities with the French had ceased. Soon after his accession, in April, 1721, Burnet laid the articles of his instructions relative to this field before the council, and asked for their assistance in obtaining legislation for giving aid to New York in supporting frontier defenses, for erecting suitable fortifications in New Jersey, and for making the militia more efficient.<sup>3</sup> But the council would only say that it was just that the Jerseys should aid in resisting French encroachments and providing for the common defense of the colonies, that, owing to the situation of the province, fortifications were entirely unnecessary, and that the defense of the colony depended entirely upon the militia, which should be made as efficient as possible.<sup>4</sup> Burnet evidently endeavored to arouse interest in the subject of defense by lending credence to the reports of hostile Indian movements.<sup>5</sup> But the attempt of the council to carry through a stricter militia act was nevertheless defeated by the assembly.<sup>6</sup> The effect made by the governor's efforts upon public opinion in the colony may be shown by the assertion attributed to one John Case, of Monmouth,<sup>7</sup> "that the country was men and would never be imposed upon, and that they would stand by one another, and that they

<sup>1</sup> Field calls Burnet's administration "the golden age of our colonial .. ."

were not to be frightened with notions of Canada Indians, for he was the man would fight them all himself that would ever come to disturb this country."

At the next session of the assembly, however, Burnet did obtain an act somewhat stricter than that of Hunter.<sup>1</sup> He also succeeded in organizing a new militia regiment in West Jersey, thus bringing the number in the province up to six.

Though Burnet was naturally interested in ecclesiastical affairs, he had little call to take positive action regarding the Church of England in New Jersey. The violently aggressive attitude of the earlier missionaries of the Society for the Propagation of the Gospel seems to have been altered somewhat by the victory of Hunter over Talbot and Coxe, and even the Anglican Church relapsed into the calm which seems to mark the entire history of the Jerseys during Burnet's rule. Burnet nevertheless saw fit to secure from "the Society" the final dismissal of the devoted Talbot on the ground that he was a Jacobite.

That the subject of trade was receiving more active attention from the home government is made evident by the additional instructions issued to Burnet. As the direct trade of the Jerseys with foreign ports, however, was still inconsiderable,<sup>2</sup> the governor evidently thought that he had little call for action. But though the administration of New Jersey was thus made singularly easy in this respect, there is no means of knowing how much illegal trade actually went on. The financial administration of Burnet was also, in the main, a continuation of that of Hunter, the powers established by the assembly over the treasury being unquestioned. Yet when the assembly in 1766 tried to secure

late treasurer, to make good the sum for which he was believed to be indebted to the province,<sup>1</sup> the governor, acting of course with the council, compelled the representatives to allow the substitution of legal proceedings against the representatives of Gordon, for the direct punishment proposed.<sup>2</sup> On the other hand, as will be more fully shown elsewhere, Burnet accepted the colonial point of view with regard to paper money, and wrote several times to the lords of trade in support of acts for the issue of bills of credit, and for the appropriation of the interest money thereby accruing to the support of the government.

There were several interesting developments in the affairs of the proprietors of East Jersey during this administration, though we must limit ourselves in this chapter to stating briefly the governor's connection with them. In 1725 the old council of proprietors of East Jersey was reestablished for the general direction of the proprietary affairs, and thereafter continued to hold regular meetings, generally twice a year.<sup>3</sup> Lewis Morris became president of the council, while Alexander, Kearney, Hamilton and Johnstone, with other persons holding office, were prominent members. The revival of the council undoubtedly increased the proprietary influence in the public affairs of the province, though, unfortunately, that influence is now difficult to trace. The governor was on friendly terms with the council of proprietors, though there is no evidence that it exercised improper influence over him. Upon application from the proprietors,<sup>4</sup> Burnet issued a proclamation declaring

<sup>1</sup> *New Jersey Archives*, vol. xiv, p. 261.

✓ Richard Ashfield the legally constituted receiver-general of quit-rents.<sup>1</sup> This step was, of course, in accordance with his instructions, but such action had not been taken since Cornbury issued his dishonest proclamation in favor of Sonmans.

At about this time Peter Sonmans himself not only ventured to return to the province, but actually collected quit-rents from the trustees of Bergen township, in virtue of his commission of 1703. This fraud was at once brought to the notice of Burnet in council by the proprietors, and, after investigation,<sup>2</sup> Sonmans was bound over for trial before the Supreme Court. Though he eventually managed to escape direct conviction, he was thus effectually removed from obstructing further the management of proprietary affairs. Aside from these matters, Burnet did not interfere in questions of the rights of proprietors.

Proprietary affairs in West Jersey remained, so far as the provincial executive was concerned, exactly as in Hunter's time.

Like all capable governors, Burnet was diligent in his correspondence with his superiors in England. He did not, however, devote as much time and attention to the affairs of the Jerseys as Hunter had done, nor do his letters carry as clear and as accurate a picture of political conditions in the colony. Burnet appears to have regularly dispatched provincial acts and the journal of the house. Towards the end of his administration, however, he received an order from Secretary Popple bidding him be more prompt in giving information regarding (1) the accounts and receipts



burials; (3) ordinance and all kinds of military stores; (4) maps of New York and New Jersey and accounts of the strength of their neighbors.<sup>1</sup> Burnet promised to have the proper officers prepare such accounts at once. With regard to the second point, however, he said that he had been advised that, since the people of New Jersey were chiefly of New England extraction, they would regard such an enumeration as a repetition of the sin which David committed in numbering the people. This had caused him to put it off. Moreover, the dissenting ministers kept no account of christenings and burials and Quakers did not baptize, so that no accurate statement of these things could be given. As regards military affairs, while he promised to submit an account for New York, he made no mention of the Jerseys.

A little later, a census of the Jerseys was actually taken<sup>2</sup> which showed that the province contained 32,442 people, 2,581 of whom were negroes. It had about three-fourths as many people as New York. Burnet also caused to be compiled from the accounts of the customs officers the statement as to negroes imported which had so often been asked for in vain. It was said that from 1698 to 1717 none had entered the province. From 1718 to 1727, 115 negroes had been brought, all from Barbadoes, Jamaica and other parts of the West Indies. The report, however, covered only East Jersey.<sup>3</sup>

The administrations of Montgomerie and Cosby were too brief to permit many general assertions as to the exact status of the executive power in their hands. Their appointments hardly had much political significance. Just before the transfer of Burnet, he had superseded Hooper as chief justice by Thomas Farmar, who had remained as

<sup>1</sup> *New Jersey Archives*, vol. v, p. 117.

<sup>2</sup> *Ibid.*, vol. v, p. 164.

<sup>3</sup> *Ibid.*, vol. v, p. 152.

second judge since Hunter's appointment.<sup>1</sup> No reason is assigned for the change, as Hooper's work appears to have been satisfactory. Three years later Farmar went insane, and Hooper was restored by Montgomerie. In Cosby's time James Smith, the provincial secretary, died, and that public-spirited governor promptly appointed his son "Billy" to act temporarily.<sup>2</sup> "Billy" did not, however, receive the royal patent which went after an interval to Robert Burnet of Perth Amboy.<sup>3</sup>

Both Hunter and Burnet used such influence as they had with their friends in the province to secure for Montgomerie a favorable reception.<sup>4</sup> They seem to have recognized that the new governor was not a man of ability and would need good counsel to avoid mistakes. Alexander and the other leaders in the Jerseys appear to have been favorably disposed toward Montgomerie. The latter, however, showed dislike for the Quakers, accusing them in his letters to the home government of being purposely annoying.<sup>5</sup> He also showed poor judgment in endeavoring to check the movement to attain a separate executive for New Jersey. This brought him into collision with John Kinsey, speaker of the assembly, as well as with public opinion.<sup>6</sup> But Montgomerie was set right in this matter by the lords of trade,<sup>7</sup> and the good feeling which had been brought about with so much effort by Hunter and Burnet was not seriously disturbed.

In his executive practice Montgomerie did not depart from the lines followed by his predecessor.

<sup>1</sup> Field, *Provincial Courts of New Jersey*, p. 126.

<sup>2</sup> *New Jersey Archives*, vol. v, p. 321.

<sup>3</sup> *Liber AAA of Commissions*, June 14, 1734.

<sup>4</sup> *New Jersey Archives*, vol. v, pp. 170, 222.

Cosby, however, came into the province under unfavorable circumstances. His conduct in New York caused him to be regarded with suspicion. Moreover, he almost at once quarreled violently with both Lewis Morris and Alexander regarding New York affairs.<sup>1</sup> He therefore incurred their bitter opposition in both provinces. Morris journeyed to England to present his side of the matter directly to the home authorities, while Alexander refused to attend council meetings under Cosby and wrote to England bitterly attacking him.<sup>2</sup>

In spite of these hindrances Cosby managed to avoid any great disturbance in the Jerseys. Apparently, however, he gave little attention to their affairs at all, less even than Cornbury. He probably entered New Jersey only once during the first nine months of his administration. He met the assembly only once; performed few executive acts and wrote little to the lords upon New Jersey affairs, except in so far as concerned Morris and Alexander. During his administration the affairs of the province must have been carried on almost entirely by the subordinate executive officers. That the province was able to take care of itself so successfully, speaks highly for the ability of Hunter and Burnet. No serious complaints of maladministration are to be met, and, with one exception, the fields of executive work seem to have suffered little from Cosby's neglect. But even at the end of the administration of Montgomerie Lewis Morris had stated to the lords that the militia was in a bad and inefficient state, owing to the fact that the fines for neglect of military duties were so low and the love of "military honour" so weak that few men could be found who would accept commissions as officers.<sup>3</sup> Nothing was

<sup>1</sup> The motives of Cosby certainly seem to have been discreditable.

<sup>2</sup> *New Jersey Archives*, vol. v, p. 360.

<sup>3</sup> *Ibid.*, vol. v, p. 319.

done by Cosby to remedy this state of inefficiency. Cosby's correspondence strengthens our opinion that he was a placeman of low order. His letters attack Alexander and Morris in violent and undignified terms, which seem ridiculous when it is remembered how prominent they had been in colonial affairs.<sup>1</sup> The general tone of his correspondence can suggest only Cornbury and Ingoldsby, of whom Cosby undoubtedly reminded not a few in the colony.

This hasty survey of the actual work of the chief executive during the Union Period makes clear certain facts. In the first place it shows how much, as well for the people of the colony, the proprietors of the Jerseys, and the home government, depended upon the ability and the personality of the Governor. In the second place, it indicates the extent to which the work of the executive was actually curtailed by the governing power of the assembly. It is evident that governors of New Jersey were in 1738 somewhat less limited in this respect than the executives of New York and some of the other royal provinces. Lastly, we see that whereas New Jersey was at first one of the most trying and contentious of all the provinces from the point of view of the executive, the ability of Hunter and the good sense of Burnet had changed it for the time into a comparatively quiet and easily controlled colony.

<sup>1</sup> *New Jersey Archives*, vol. v, pp. 325, 329, 366, 395.

## CHAPTER XII

### THE GOVERNOR IN LEGISLATION

No statement of the position of the governor in the provincial government could be complete which did not include his legislative work. The governor had the power to call, dissolve, prorogue and adjourn assemblies,<sup>1</sup> and during the sessions he presided in person over the council which constituted the upper house. Following the usage of the other provinces, which was in turn based upon the precedents of the English Parliament, the governor always opened sessions of the legislature by a speech to the members of the two houses. This speech usually stated the purpose of the session, recommended certain necessary subjects of legislation, and made patriotic reference to the benefits received from the royal government. The assembly then regularly withdrew and went into committee on the governor's speech, usually resolving, after brief consideration, what action it would take. During the actual work of legislation the governor sometimes communicated with the assembly by messages, which were entered in the journal. On occasions of special importance, he summoned the two houses before him, as at the beginning, and addressed them personally. More frequently, however, the assembly communicated with the governor, requesting privileges, asking him to take action in matters like the removal of certain officers and the naming of new ones, or asking information as to his views or

<sup>1</sup> *New Jersey Archives*, vol. ii, pp. 492, 494.

powers. In matters of more serious nature, the house sometimes drew up formal addresses or remonstrances to the governor, and waited upon him while these were read by the speaker. When a bill granting "support" to the government was completed, it was the custom for the speaker and the house to attend the governor in a body to present it. And when the governor at length determined to end the session, he always summoned the houses, and, in their presence, formally assented to the bills which had been passed and which met with his approval. There was usually also a closing speech by his excellency in which he thanked or reproved the assembly as the case might be.<sup>1</sup>

Such from a mechanical point of view was the part played by the chief executive in the making of laws. In the extent of their influence, however, in the manner in which they exercised their power over the assembly, and in their success in obtaining the legislation which they desired, there were the widest differences among the governors. These differences are not always to be readily seen in the assembly and council journals. The opening speeches of nearly all the sessions read very much alike.<sup>2</sup> These ask for the legislation which the governors are told by their instructions to obtain. The two subjects almost always brought forward are the support of the government and the reorganization of the militia. As to the patriotic utterances, they are too conventional to have much practical meaning. In many of the proceedings of the council and house the governor is hardly mentioned. The actual relation of the governor to what is going on is, in many cases, to be found only by reading care-

correspondence of the governors and other officers with the home government.

It must be remembered, also, that in the actual process of legislation the council was scarcely more than the mouth-piece of the governor. Disagreements between the council and the house were in most cases disagreements between the executive department and the assembly. The governor, no doubt, often took advice from the leading councillors. Nevertheless, the members of the council were in practice dependent upon the governor for their places, and could be relied upon to do his bidding. To this general statement there are exceptions, but they are of such nature as to prove the rule. Under Lovelace, it cannot be said that the governor controlled a majority of the council, for the ring of Cornbury was still entrenched there. The administration was too brief, however, to permit of the drawing of a serious issue. Hunter's rule began with a direct conflict between governor and council. But, as in the case of Lovelace, this disagreement occurred because the creatures of the former executives were not in sympathy with the new governor. After Hunter had succeeded in expelling his opponents from the upper house, his control over that body was complete.

The efforts of Cornbury in legislation were a complete failure. He was commanded by his instructions to secure an act for the support of the government.<sup>1</sup> Such act was to be unlimited in time, unless there was temporary need.<sup>2</sup> He was also ordered to obtain a law securing the lands to the proprietors and those who had purchased of them. The proprietor's quit-rents and other privileges were likewise to be safeguarded.<sup>3</sup> Cornbury was told to obtain

<sup>1</sup> *New Jersey Archives*, vol. ii, p. 513.

<sup>2</sup> *Ibid.*, vol. ii, p. 515.

<sup>3</sup> *Ibid.*, vol. ii, p. 517.

an act allowing the solemn declaration of the Friends to stand for an oath, similar to that passed in England in the reign of William.<sup>1</sup> He was also to have an act passed for securing discipline in the military forces of the province, and was to obtain contributions for the defense of New York.<sup>2</sup> It was desired that the general assembly should restrain by legislation all inhuman severity toward slaves and servants.<sup>3</sup> An act was to be secured insuring to creditors in England the payment of debts due from persons having estates in New Jersey.<sup>4</sup>

In not one of these matters did Cornbury succeed in fulfilling the wishes of the home authorities, and he was likewise unsuccessful in securing his own personal objects, unless the two bribes he is known to have received be considered.<sup>5</sup> He recommended to the first assembly the raising of a support for the government and the confirmation of the proprietors' estates.<sup>6</sup> At its second meeting he added recommendations for a militia act, and for provision for the repair of roads, and for the establishing of a beacon on Sandy Hook.<sup>7</sup> But in his dissatisfaction at the small appropriation offered by the assembly to himself and his friends, he prevented, by adjournment, the passage of bills to confirm the proprietary estates and for other objects. He then broke away from the proprietary party and entered into his infamous deal with their opponents. To obtain his ends he excluded upon the flimsiest pretext three regularly elected members from the second assembly, thus securing for a time an anti-proprietary majority which he hoped would do his will.<sup>8</sup> The assembly did, indeed, grant a some-

<sup>1</sup> *New Jersey Archives*, vol. ii, p. 522.

<sup>2</sup> *Ibid.*, vol. ii, pp. 524, 532.

<sup>3</sup> *Ibid.*, vol. ii, p. 532.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*, vol. iii, pp. 198-219.

<sup>6</sup> *Assembly Journal*, Nov. 10, 1703.

<sup>7</sup> *Ibid.*, Sept. 7, 1704.

<sup>8</sup> *New Jersey Archives*, vol. iii, p. 88.



what larger sum to the government for two years. It also passed a militia act intended to punish the Quakers, an act altering the method of electing the representatives in the interest of the anti-proprietary party, an act for the laying out of highways, and an act for regulating negro and Indian slaves.<sup>1</sup> But so ill-concealed was the motive in these measures that all, even the act of support, were disallowed by the home government.<sup>2</sup>

At the very next session the party of Morris, Jennings and Gordon regained control of the assembly. The party bitterness was greatly increased by the numerous scandals of the administration and the injustice of the courts and executive officers, and from this point to the end of his rule Cornbury could do nothing with the assembly. Not only could he not secure the legislation he recommended, but he could not obtain any legislation at all. The representatives occupied themselves with the grievances of the province, and the Jerseys were left almost entirely without laws.

The fact that Lovelace succeeded such a person as Cornbury, together with his own high character and reputation, gave him much influence with the single assembly which met under his governorship. In the line of positive recommendations Lovelace asked only for support for the government and a proper militia act,<sup>3</sup> and with these suggestions the house readily complied. The act of support was indeed limited to one year, but upon the matter of limited grants no assembly ever yielded to a royal governor.<sup>4</sup> The

<sup>1</sup> *Laws Enacted in 1704* (Bradford print).

<sup>2</sup> Allinson, *Statutes of New Jersey; New Jersey Archives*, vol. iii, p. 324. The act regulating slaves was disallowed because it provided for the infliction of an inhuman penalty; *New Jersey Archives*, vol. iii, p. 473.

<sup>3</sup> *New Jersey Archives*, vol. xiii, p. 309.

<sup>4</sup> Burnet did, however, obtain support for lengthened terms.

governor had, in his set of instructions, been directed to alter the method of selecting representatives, so as at the same time to prevent the carrying-out of Cornbury's scheme, and to rectify the faults of the method originally in force.<sup>1</sup> The assembly was found very willing to put this instruction in the form of an act.<sup>2</sup> Numerous other laws were passed, though there is no evidence that any of them originated with the governor or his advisers.

Whether Lovelace could have retained his influence or not, is of course uncertain. Ingoldsby, owing to his connection with Cornbury, had at first to combat the hostility of the assembly. But, fortunately for him, Colonels Nicholson and Vetch appeared with the royal commands for raising troops and supplies for their Canada expedition,<sup>3</sup> and, unwilling as the supporters of the proprietors were to countenance the lieutenant-governor, they could not disregard the wishes of the crown. Ingoldsby undoubtedly secretly wished the assembly to reject the recommendations for aiding the expedition, so that he might cast the blame upon the Quakers. Through a shallow trick on the part of two anti-proprietary members of the house, at which the clique in control of the executive department connived, the bill appropriating funds for the expedition was defeated.<sup>4</sup> But, through the efforts of Nicholson and Vetch, the lieutenant-governor was virtually compelled to call the assembly again, and the required acts were promptly passed, in spite of the nominal opposition of the Quakers based upon religious principle rather than political feeling.

A new election, however, resulted in the choice of a house

<sup>1</sup> *New Jersey Archives*, vol. iii, pp. 318, 325.

<sup>2</sup> Allinson, *Statutes of New Jersey*.

favorably disposed toward the lieutenant-governor. His opening speech to the fifth assembly has not been recorded, but he secured the passage of an act giving a large part of the sum previously appropriated for Lord Lovelace to himself. This act would no doubt have been disallowed but for the failure of Ingoldsby and Secretary Basse to send to the home authorities the laws passed under Lovelace.<sup>1</sup> By their suspicious negligence the crown was deprived of the opportunity of acting on the two measures relating to the support of the government separately. Two of the other acts passed by the fifth assembly were also greatly in the interest of the political faction with which Ingoldsby had identified himself.<sup>2</sup> These were the "Act for ascertaining the place of Setting of the Representatives in General Assembly," and the "Act for better Qualifying Representatives." The former enacted that henceforth sessions of the assembly should be held only at Burlington, where Ingoldsby and Coxe had much influence.<sup>3</sup> The latter act was an effort to disqualify Dr. Johnstone, Capt. Farmar, and other proprietary leaders.<sup>4</sup> We have no way of knowing, however, how far these measures were the work of the lieutenant-governor himself. It is more likely that they were instigated by Coxe.

With the advent of Hunter the relations of the governor with the legislature became completely changed. Like Lovelace, he had from the beginning the support of the lower house, in which the proprietary party again dominated. On the other hand, he encountered at first the opposition of the council, who defeated numerous bills which had the approval of Hunter.<sup>5</sup> Nevertheless, he secured in

<sup>1</sup> *New Jersey Archives*, vol. iv, pp. 57, 66.

<sup>2</sup> *Ibid.*, vol. xiii, p. 411.

<sup>3</sup> *Ibid.*, vol. iv, p. 67.

<sup>4</sup> *Ibid.*, vol. iv, pp. 57, 67.

<sup>5</sup> *Ibid.*, vol. iv, p. 51 *et seq.*

the very first session an act for the support of the government and an act for the reviving of the militia act, an achievement which had been impossible for Cornbury.<sup>1</sup> By his urgent representations to the home authorities, Hunter secured, after a tedious delay, the dismissal of the troublesome persons from the council, and henceforth, with the exception of one short period, really dominated both houses of the legislature. That he succeeded in retaining his influence in the legislative branch to the end of his administration, affords a high proof of his skill. He accomplished this partly by his friendship with Morris, Gordon, Johnstone and Gardiner, the leaders of the dominant proprietary party, and partly by the shrewdness he displayed in his actual dealings with the assembly. Hunter personally never took a prominent part in the actual proceedings of the houses; he avoided interfering with their deliberations, and was willing in every way to consider their prejudices. He recognized clearly what a governor could not hope to accomplish, and never began a contest in which he was likely to meet defeat, even if he had to sacrifice his instructions themselves. Yet, indirectly, he gained everything that a royal governor could fairly expect, and was a real, though quiet, directing force.<sup>2</sup>

He obtained without difficulty continuous support for the government, and, although all the appropriations were limited in time, they were regularly renewed.<sup>3</sup> Militia bills, placing the forces of the province in a fairly efficient state, were also passed and renewed.<sup>4</sup> The long-delayed bill giving to the affirmation of Quakers the full validity

<sup>1</sup> *New Jersey Archives*, vol. iv, pp. 64, 65.

<sup>2</sup> *Assembly Journal*, *passim*.

<sup>3</sup> *New Jersey Archives*, vol. xiii, pp. 469, 552; vol. xiv, p. 111.

<sup>4</sup> *Ibid.*, vol. xiii, pp. 470, 541.

of an oath was another achievement.<sup>1</sup> Acts for enforcing the collection of taxes, and for enforcing the ordinance establishing fees, met the approval of assembly and governor alike.<sup>2</sup> But it is not in place here to give a full list of all the laws advantageous to the executive which resulted from Hunter's skill. Enough has been stated to show his success in this field.<sup>3</sup>

Only once was this control of the assembly seriously threatened, and that was when, upon the choice of the seventh assembly, Col. Daniel Coxe, his great opponent, succeeded in controlling a majority. The manner in which he was able to overthrow Coxe and his followers, obtain their expulsion from the very house they had controlled and once more gain control of the assembly, exhibits at the same time the governor's shrewdness and the strength of his position in the colony.<sup>4</sup> Hunter was not over-scrupulous, it is true, yet he solved a serious political difficulty, while keeping within legal bounds.

Burnet was somewhat less fortunate than Hunter in his legislative duties. His first meeting with the assembly was almost disastrous, owing to the combination which had been formed against him by the proprietors, Willocks and Johnstone.<sup>5</sup> Burnet also used poor judgment, losing his temper at the opposition, and interfering continually in the deliberations by speeches and messages.<sup>6</sup> The provocation

<sup>1</sup> *New Jersey Archives*, vol. xiii, p. 541.

<sup>2</sup> *Ibid.*, vol. xiii, p. 552. The latter was a just attack by governor and house upon Secretary Basse. It was eventually disallowed.

<sup>3</sup> As instances of the feeling of the assembly toward Hunter see two of their addresses; *New Jersey Archives*, vol. xiv, pp. 21, 28.

<sup>4</sup> *Assembly Journal*, May 8, 1716, at 222.

was no doubt great, but Hunter would have been more patient. The result of the conflict was the total failure of legislation.<sup>1</sup>

In the later meetings, after Willocks had been chased from the Jerseys, Burnet was far more successful. He never again failed to obtain the required appropriations for support, and actually succeeded in having the grant lengthened to five years, a notable victory.<sup>2</sup> The militia was regularly maintained by the legislature, and the penalties for default made somewhat stricter.<sup>3</sup> The act for the security of the government, intended to secure the apprehension and punishment of Jacobites, was another important gain of the early part of Burnet's administration.<sup>4</sup> Throughout, his wishes were respected by the assembly, and his influence was considerable. Yet his control was probably never as well secured as that of Hunter.

Montgomerie's brief experience with the assembly of the Jerseys was not altogether happy. In spite of the fact that he was favorably regarded, his first session ended in failure, because he set himself in opposition to the movement to secure a complete separation from New York, a matter in which the assembly was now much in earnest.<sup>5</sup> A second meeting gave better results, as Montgomerie secured a militia act.<sup>6</sup> Several other laws were also passed which the governor approved, though their nature shows that he could hardly have originated them. While the records of the journals are not conclusive, we may believe with reason-

<sup>1</sup> *New Jersey Archives*, vol. v, p. 10.

<sup>2</sup> *Ibid.* vol. v, p. 53. In 1703 he attained an "additional support."

able certainty that Montgomerie had little directing influence, like that exercised by Hunter and Burnet.<sup>1</sup>

Cosby, the last executive of the Union Period, met the assembly only once. But in this meeting he was more successful than might have been anticipated from the results of his conduct in New York. There was no open conflict, and the assembly passed not only a measure for support, but also an act enabling creditors to recover debts.<sup>2</sup> What might have occurred had Morris remained in New Jersey instead of seeking redress in England, is, of course, a matter of speculation.

Taking the part played by the governor in the work of legislation as a whole, our study shows that the office was respected by the legislative bodies, and that, when the post was held by men who sought the welfare of the province, they could obtain reasonable measures which did not run absolutely counter to colonial views. The extent of the directing influence possessed by the governor, on the other hand, depended upon his political skill and his ability in handling men. It must never be forgotten, however, that there were certain things which no governor could ever persuade the assembly to enact, such as unlimited appropriations, really rigorous militia laws, and contributions for the aid of New York.<sup>3</sup> The wiser governors made no serious effort to secure these things. The general influence of Hunter was, no doubt, practically the greatest which any executive could have secured.

<sup>1</sup> The general character of his relations with the assembly are shown in his letter of November 20, 1730; *New Jersey Archives*, vol. v, p. 288.

<sup>2</sup> *Ibid.*, vol. xiv, pp. 501-2.

## CHAPTER XIII

### THE MOVEMENT FOR A SEPARATE GOVERNOR

THE union with New York was never really popular in New Jersey, and, from the time it went into effect down to the separation in 1738, there were constantly recurring efforts to secure a distinct executive. Upon the surrender by the proprietors, as has been indicated, an effort was made to have Andrew Hamilton, the last proprietary governor, continued, but he was rejected by the home authorities because they held that he had borne too great a part in the political struggles of the Jerseys.<sup>1</sup> If we are to believe Lewis Morris, he himself was then considered, and would probably have been chosen had it not been for the influence of Cornbury, who was desirous of increasing his income by obtaining the addition of the Jerseys to the territory over which he was to rule.<sup>2</sup> It is hardly probable, however, that the lords of trade instigated the union with the mere purpose of securing gain for the royal governors. There was the feeling that the Jerseys were poor and weak, and that they could not maintain efficient separate government.<sup>3</sup>

At the beginning there seems to have been no popular feeling against Cornbury, because he was at the same time governor of New York. As feeling developed against the corrupt administration of his lordship, however, one of the



sided continually in New York and neglected the Jerseys.<sup>1</sup> The fact that Lieutenant-Governor Ingoldsby was stationed permanently at Burlington was justly disregarded by the leaders of the assembly, as, indeed, he did nothing, and was a needless expense.<sup>2</sup> In the great remonstrance of 1707, which sums up the chief causes of complaint against Cornbury, the first charge relates to his continued absence. The object of the opposition was, however, to get rid of the governor and his corrupt ring personally. Centering their efforts upon this, they wisely forbore to demand sweeping changes in the constitution of the province, and so the need for a separate governor was only hinted at, rather than openly asked, during the campaign against Cornbury. It is amusing to note that, whereas in 1707 the assembly complained of Cornbury's continued absence, a later assembly declared that they were fully convinced that Cornbury's presence would have been still more hurtful.

Lovelace was welcomed because his advent put an end to Cornbury's power, and Ingoldsby was, of course, not regarded as a permanent executive. But there seems to have been no active attempt to secure separation during the interval before the commissioning of Hunter. The bitter party strife in the Jerseys continued to prevent this issue from being made prominent. The able rule of Hunter gave satisfaction to the proprietors and peace to the province. He had, nevertheless, to combat the hostility of such able men as Colonel Coxe, Basse and Sonmans. After he had driven them from the council, Coxe, Basse and their followers appealed to the people against the governor, and, as we have noted, succeeded in gaining for a short time control of the assembly. In his efforts to arouse public

feeling, Coxe appears to have appealed largely to the prejudices of the churchmen against the Quakers; he also, however, began to voice the demand for a separate governor.<sup>1</sup> This was certainly shrewd politics, for Coxe might hope not only to obtain much support on the question, but also to cause special annoyance to the governor, who was thus threatened in his income. Hunter, however, wrote to the lords that he would heartily join with Coxe in his supplication, if it were consistent with his duty; but as it was an ill precedent, he would endeavor to put a stop to the agitation.<sup>2</sup>

After allowing himself and his followers to be expelled from the assembly for non-attendance, Coxe, probably fearing prosecution, made a journey to England to make direct representations against Hunter. As to his conduct in London and what he succeeded in accomplishing we know little, except that in the end Hunter was vindicated. Samuel Bustall, a friend of Coxe, who accompanied him, wrote home, however, that Hunter was to be displaced, and that New Jersey was to have a separate administration.<sup>3</sup> Undoubtedly Coxe made every effort, though unsuccessfully, to accomplish this result.

The matter of separation did not again come up under Hunter, nor do the lords seem to have considered it when Burnet was named as governor of New York and New Jersey. From the beginning, Burnet, advised probably by Hunter, seems to have understood that the people of New Jersey desired a separate governor. In his opening speech at the first meeting of the assembly, he assured the members that he would give the province a proportional amount of his time. In 1721, in a report upon the condition of New Jersey, he assured the lords that the people thought it a

<sup>1</sup> *New Jersey Archives*, vol. iv, p. 233. <sup>2</sup> *Ibid.* <sup>3</sup> *Ibid.*, vol. iv, p. 263.

great hardship to pay a governor who resided in another colony, and that they would gladly raise a larger sum for a governor of their own, believing that a separation would greatly increase the trade and welfare of the province.<sup>1</sup> At about the same time, when the question of the ownership of the islands in the Delaware was being considered by the home government, a description of the island of Burlington, prepared by Daniel Coxe, pointed out that when New Jersey obtained a separate governor the said island would be a highly suitable place for his residence.<sup>2</sup>

Since the people of New Jersey enjoyed great prosperity and quiet under Burnet, no further active agitation was for some time carried on. Yet, during the administration, the feeling against having persons in offices of trust who did not reside in the province, strongly developed.<sup>3</sup> Burnet showed wisdom in countenancing this feeling, and one important result was the supplanting of Jamison, the chief justice, by Trent, a Jerseyman.<sup>4</sup> The establishment of an agent in London, responsible only to the New Jersey Assembly, was also a noteworthy step, though the object was not primarily to obtain a complete separation from New York.<sup>5</sup> In the very last session of Burnet's term, the movement for a separate executive was, however, renewed by the able and ambitious John Kinsey, of Middlesex. Burnet succeeded in postponing the matter by holding a conference with Kinsey and his friends, in which he told them that he could not at that time countenance their demand, and that if they persisted he must dissolve the assembly.<sup>6</sup> They

<sup>1</sup> *New Jersey Archives*, vol. v, p. 21.

<sup>2</sup> *Ibid.*, vol. v, p. 40.

<sup>3</sup> *Assembly Journal*, Nov. 20, 1723.

<sup>4</sup> *New Jersey Archives*, vol. v, p. 77.

agreed for the time being, but the matter was henceforth regarded as one of the important questions of provincial politics.

Montgomerie, though of no great ability, had been thoroughly informed of conditions in New Jersey by both Hunter and Burnet.<sup>1</sup> He, however, made the mistake of opposing the strong public opinion regarding separation. Kinsey was a controlling element in the assembly, and early in its first session under the new executive, it voted that having a distinct government would be advantageous to the colony. It then proceeded to consider the best means of obtaining one, and named a committee to ask the governor and council for their coöperation and a conference. They were to inform Montgomerie that it was not their desire to cause him the least uneasiness, but merely to perform what they believed to be a duty.<sup>2</sup> But Montgomerie would make no terms. As soon as he learned of the action of the house, he laid the matter before the council, and as a result adjourned the assembly. Soon after he dissolved it. In writing home in regard to the matter, Montgomerie stated that, since the assembly had made no mention of addressing the crown, he regarded their action as disrespectful to the king. The lords of trade, however, very properly took a different view of the affair, and replied that, though the manner in which the assembly proceeded might have been indiscreet, they did not think that subjects, especially when met in assembly, should be discouraged from appealing to the crown.<sup>3</sup> This

speech to his last assembly urged that an official residence be provided

answer evidently frightened the governor, for he made haste to reply that the leaders of the assembly had carried on their plans at secret meetings and had refused to work openly, and that he had acted according to the advice of his council.<sup>1</sup> Warned by the advice of the lords, Montgomerie assumed a different attitude toward the newly elected assembly. The change was fortunate, as Kinsey was chosen speaker, thus showing that he controlled a majority of the house. An understanding was now probably arrived at between the governor and the speaker, and, by permission of Montgomerie, Kinsey prepared an address to the crown setting forth the advantages of a distinct government. This address was promptly voted by the house and transmitted to England by the governor himself. The address stated briefly that, as the governor resided in New York, the affairs of that province necessarily occupied most of his time, and application to him was difficult. The same thing applied also to other officers, who not only lived in New York, but spent their salaries there. The people of New Jersey were well pleased with Montgomerie, but honestly believed that a separate government would be an advantage.<sup>2</sup>

The unexpected death of Montgomerie led to more vigorous action for separation. When Morris, as president of the council, took over the administration, an address was presented to him by his council, setting forth the evils of the absence of the governor in New York, and advocating an independent government.<sup>3</sup> A copy of this address was sent to the Duke of Newcastle, and his friendly intervention with the king was asked by Richard Partridge, now the agent of

<sup>1</sup> *New Jersey Archives*, vol. v, pp. 268-269.

New Jersey.<sup>1</sup> A little later President Morris wrote personally to Newcastle advocating separation.<sup>2</sup> As usual, his letter is able and gives a clear idea as to the situation. Morris said that it was undoubtedly the desire of the greater part of the people to have separation. But many were indifferent, and those living near New York were opposed. One of the most popular arguments used was that, if New Jersey had a governor of her own, many of the merchants of New York and Philadelphia would settle there, and thus increase the trade of the province. But Morris himself was uncertain as to this, as New York and Pennsylvania had much the better of them in trade. Morris, however, believed that the addition of New Jersey to New York meant more to prospective governors in London than to actual governors in America. Their expense in attending to it would be as much as their profits. Finally, the president of the council admitted that the people of the Jerseys really wished a redivision of the province into East and West Jersey.<sup>3</sup> But, though each part was anxious to obtain the governor's residence, if a separate governor came, neither part had a house for the governor or anything for this entertainment except an inn. The jealousy of the divisions might even defeat all suitable provision for the governor.

Morris also pointed out that an able man would be necessary to control the assertive assembly of New Jersey, and closed his communication by modestly recommending himself for the post. The wishes of the leaders and people of the Jerseys, however, did not prevail immediately against

<sup>1</sup> *New Jersey Archives*, vol. v, p. 303.

<sup>2</sup> *Ibid.*, vol. v, p. 314 *et seq.*

the influence of Cosby, who was forthwith commissioned as governor of both New York and New Jersey. Under the conditions of the old colonial system it was indeed difficult to secure any changes of existing institutions without continued effort. It may be noted that the bitter animosity between Morris and Cosby may not have been altogether disconnected with the attempt of the former to obtain a commission for New Jersey.

Cosby, in his opening speech, expressed his earnest desire to divide his time between the two provinces.<sup>1</sup> But it appears that he paid less heed to the affairs of New Jersey than any governor since Cornbury. During the single session of the assembly held during his rule, however, no formal action was taken to secure separation so far as the governorship went. The house did present an address to Cosby representing the need of appointing as members of the council and other important officers only such as were actually residents. To this prayer Cosby replied favorably.<sup>2</sup> Later in the work of the assembly the governor thought it necessary to reprove the house for its slowness, and to adjourn it for a short recess. In his speech on this occasion, he said he knew their desire to obtain a distinct government, and was willing to do all in his power to remove difficulties, implying, of course, that the members were showing ingratitude.<sup>3</sup> The death of Cosby occurred, however, before anything further was accomplished.

It now seemed to be the common understanding that a separation would be effected. Almost the first act of Colonel John Anderson, the new president of the council, was to transmit to Newcastle a petition to the king praying

for a separate governor, signed by himself, the council and divers members of the assembly.<sup>1</sup> The agitation was then actively taken up by Richard Partridge, the agent, who submitted another petition and a representation based upon the former communication of Lewis Morris,<sup>2</sup> and who followed this by a further detailed statement of reasons for the separation of New Jersey from New York.<sup>3</sup> The want of a separate governor, he said, ruined the trade of New Jersey, abated the price of land, and depopulated the province. As there was no naval officer, no vessel could be registered without going to New York, and from some places that cost £10. Acts for preserving timber could not be enforced, lest they prejudice the trade of New York. The consumption of provisions and manufactures "from hence" would be greater if the governor and all officers were residents of the Jerseys. People in Europe would not settle in a province which was dependent. All judges and other officers had to be attended at New York, and this also robbed New Jersey of the sums paid them. No application could be made to them upon sudden occasion without great expense, and sometimes not then. As the governor lived in New York, he seldom held councils in New Jersey, and hence writs of error from the supreme court sometimes lay a year without attention. The militia could not be disciplined, because the officers lived without the province. The judges countenanced the New York lawyers, who carried away all the business. The troubles of New Jersey were not understood in New York. The



mended to office persons who were scarcely known in New Jersey. The governor, moreover, could hardly be expected to pass bills affecting the interests of New York. New Jersey was entirely ready to support her own administration. Many Palatines and others would not settle in New Jersey, because they had been ill-treated by the governor of New York. If there were a separate government, it would prevent much trouble to the people of New Jersey who were loyal to the crown. The trade of the colony would increase, and that would help England, as more people would be employed in making naval stores. Though the agent in his zeal undoubtedly overstated the facts, and though his ill-assorted and ill-arranged reasons are based largely upon the economic theories of mercantilism, there was, nevertheless, sufficient truth at the bottom of nearly all his statements to prove his main contention.

Meanwhile, Sir William Keith had applied for the separate governorship of New Jersey and added his efforts to those of Partridge.<sup>1</sup>

But in the colony the attention of the political leaders had meanwhile been diverted by the unseemly contest between Hamilton and Morris for the presidency of the council. This contention ended in the recognition of the former, who was ordered to preserve order until the arrival of Lord Delaware, who was to be commissioned as joint governor of New York and New Jersey.<sup>2</sup> The astonishing decision of the home authorities to continue the union was, however, not final. Upon more mature consideration it was decided to grant to New Jersey the distinct administration she had so long desired, and this concession was followed by the further one of naming Lewis Morris as her first in-

dependent governor. Though his recent conduct had been found unwarrantable,<sup>1</sup> Morris was certainly entitled to the place by his long experience in New Jersey affairs, as well as by his undoubted ability. Only later results could show that, after all, he lacked some of the qualifications needed for a successful executive.

The demand of New Jersey was certainly a just one, in the light of her growth in population and wealth. Its recognition was proof that the home government was desirous of benefiting the province by every proper means consistent with the political and economic theories of the time. But the delay and trouble in carrying the matter through, as usual, must have given the colonists the impression that the concession was made grudgingly and hesitatingly.

<sup>1</sup> *New Jersey Archives*, vol. v, pp. 480-1.

## CHAPTER XIV

### OTHER EXECUTIVE OFFICERS

WHEN the royal government was instituted over New Jersey, Richard Ingoldsby was commissioned as lieutenant-governor under Lord Cornbury.<sup>1</sup> He held a similar position, also, in New York. The object of creating a lieutenant-governor appears to have been to provide a capable substitute for the chief executive in that one of the united provinces from which it was necessary for him to be absent. It must have been thought, therefore, that Ingoldsby should devote himself especially to New Jersey. The lieutenant-governor was, of course, to succeed the governor in case of his death or absence. From the beginning, however, the arrangement worked poorly. The selection of an ambitious office-seeker like Ingoldsby was a mistake second only to the appointment of Cornbury himself. Cornbury was, moreover, suspicious of Ingoldsby.<sup>2</sup> For this suspicion there was some reason, for Cornbury's conduct was of such character that it was highly dangerous for him that any one, especially a possible successor, should be closely informed as to the nature of his acts.

Trouble began as early as November, 1704. At this time Ingoldsby, though on his way to Burlington, was at New York City. Cornbury was at Burlington, attending a session of the New Jersey assembly. A letter arrived from

the frontier addressed to the governor, and Ingoldsby, believing it to be of importance, summoned the council at New York, and opened it. He then forwarded a translation to Cornbury.<sup>1</sup> For this act he was sharply rebuked by his superior, who declared that Ingoldsby knew that he was stationed at Burlington, and that his presence at New York was accidental.<sup>2</sup> Ingoldsby then proceeded to Burlington where he remained. A little later, upon application, he gave a pass to an Indian chief to visit New York. At this step Cornbury was again displeased, and told the lieutenant-governor that he had exceeded his authority. Ingoldsby then asked for instructions, but Cornbury gave none, saying that he should not act at all.<sup>3</sup>

Ingoldsby, who seemed to have been chagrined at his lack of power, wrote in November, 1705, to the lords of trade complaining of Cornbury's treatment and asking instructions.<sup>4</sup> But the home government, upon consideration of the matter, decided that the existing arrangement was a cause of confusion. Ingoldsby's commission as lieutenant-governor of New York was therefore ordered revoked.<sup>5</sup> He was, however, at the same time appointed a member of the council of New Jersey, to which he had not previously belonged.<sup>6</sup> Thereafter he remained stationed permanently at Burlington, representing Cornbury in a sense, though performing no important acts of government.<sup>7</sup> The

<sup>1</sup> *New Jersey Archives*, vol. iii, pp. 67, 110.

<sup>2</sup> *Ibid.*, vol. iii, p. 68. <sup>3</sup> *Ibid.*, vol. iii, p. 111. <sup>4</sup> *Ibid.*, vol. iii, p. 109.

<sup>5</sup> *Ibid.*, vol. iii, p. 145. It does not appear, however, that the order was signed by the queen; *ibid.*, vol. iii, p. 469.

<sup>6</sup> *Ibid.*, vol. iii, p. 145.

lieutenant-governor would have been, indeed, an expensive ornament for New Jersey, had it not been for the wisdom of the assembly in refusing to grant any funds whatever for the support of Cornbury and his corrupt crew.

In spite of what had passed between Cornbury and Ingoldsby, the latter became an important member of the clique supporting the tyranny of the governor. He signed the council's address to the Crown in favor of Cornbury's course, and was in general a subservient tool. Yet, in spite of the fact that Ingoldsby had been deprived of all authority, Cornbury did not hesitate to declare, in reply to that part of the famous assembly protest of 1707, which complained of his continued absence from the Jerseys, that the lieutenant-governor was always in the province to do justice to all.<sup>1</sup> While at Burlington, Ingoldsby was closely associated with Daniel Coxe, Jr., and Basse. With them he was prominent in the "Jacobite" church, St. Mary's. Nevertheless, on one occasion he was refused the sacrament by the brave Mr. Moore.<sup>2</sup>

During the brief rule of Lovelace Ingoldsby continued as lieutenant-governor. He did nothing, however, except to give such encouragement as his title afforded to the clique of councillors opposing the assembly.<sup>3</sup>

Upon the untimely death of Lovelace, Ingoldsby assumed the execution of his commission and instructions as his designated successor.<sup>4</sup> The general character of his administration has already been stated. He called meetings of the council and assembly, signed commissions and wrote to the home authorities, just as a full governor would have done. In his first letter to the lords he asked for a con-

tinuance of his power as governor upon the ground that he had served long in Cornbury's time without recompense.<sup>1</sup> The reply of the lords, however, was to revoke Ingoldsby's commission and order him to cease from exercising further authority.<sup>2</sup> In the light of Ingoldsby's character and ability, this was a wise decision. His brief term of power ended thus ingloriously.

A lieutenant-governor was never again appointed for New Jersey. The office had proved inconvenient, useless and expensive.

In Cornbury's commission it was stated that in case of the death or absence of the governor, if there were no lieutenant-governor, the administration should be assumed by the council, and the councillor who should at the time be residing in the province, and who was named in the instructions before any other councillor, should preside, with such powers as should be necessary in those circumstances for the carrying on of orderly government.<sup>3</sup> But the instructions ordered the council in such cases to forbear all acts of authority not immediately necessary, until the appointment of the new governor.<sup>4</sup> By an additional instruction, issued to Cornbury in 1707, a slight change was made in the arrangements for the succession. This article stated that the oldest councillor, whose name was placed first in the instructions, and who was actually residing in the province at the time of the absence or death of the governor, should assume the administration until the governor returned or the further pleasure of the Crown was known.<sup>5</sup> The office of president of the council was thus rendered a little more definite.

<sup>1</sup> *New Jersey Archives* vol iii p. 462

<sup>2</sup> *Ibid* vol iii p. 474

In Cornbury's instructions the name of Edward Hunloke, of West Jersey, stood first, and that of Lewis Morris second.<sup>1</sup> Before the council took the oaths, however, Hunloke was dead, and Morris, therefore succeeded to the rights of "first named councillor."<sup>2</sup> Morris was, however, soon suspended from the council because of his violent opposition to the governor, and, although the lords of trade directed Cornbury to restore him upon his making due submission,<sup>3</sup> he did not resume his place until the accession of Lovelace. Upon the death of Lovelace and the assumption of power by Ingoldsby, the devoted Morris was once more suspended.<sup>4</sup> But his name was again placed first among the councillors when Hunter's instructions were drawn.<sup>5</sup>

While Morris was under suspension, the presidency of the council fell to William Pinhorne, better known as second judge of the supreme court under the administrations of Cornbury and Ingoldsby. During the early part of Ingoldsby's rule, Pinhorne, in the capacity of first named councillor, actually presided over several meetings of the council in the absence of the lieutenant-governor.<sup>6</sup>

But from the arrival of Hunter until his death, the presidency of the council was held continuously by Lewis Morris. The fact that such an able, well-known and influential person held the position, undoubtedly added something to the importance of its honorary value, while, conversely, the fact that he was president increased the prestige of Morris.

Yet, Morris, with all his excellent qualities, appears to have been a little vain, and to have assumed a dignity as

<sup>1</sup> *New Jersey Archives*, vol. ii, p. 507.

<sup>2</sup> *Ibid.*, vol. iii, p. 1.

<sup>3</sup> *Ibid.*, vol. iii, pp. 124, 349.

<sup>4</sup> *Ibid.*, vol. iii, p. 464.

<sup>5</sup> *Ibid.*, vol. iv, p. 2.

<sup>6</sup> *Ibid.*, vol. xiii, pp. 340, 350, 351 *et seq.*

president of the council which the actual importance of the office hardly justified. This attitude at times excited the ridicule of Morris' enemies, as when, upon the arrival of Lovelace, Morris presented a personal address of congratulation and approval to the new governor.<sup>1</sup>

Owing to the presence of the lieutenant-governor and the brief interval between the retirement of Ingoldsby and the arrival of Hunter, the actual administration of the province does not seem to have been assumed by the president of the council until 1719, during the period between the withdrawal of Hunter and the arrival of Burnet. During this interval Morris deemed it necessary to summon several meetings of the council and to take up some rather important business.<sup>2</sup> Steps were taken to enforce the collection in Burlington and Hunterdon counties of the tax required by the act for the support of the government.<sup>3</sup> The council insisted that the treasurers of the province should have security, and when Basse was unable to do so, accepted his resignation.<sup>4</sup> The accounts of Gordon, the late provincial treasurer, were audited and found satisfactory.<sup>5</sup> Two rather important communications were received from the home authorities and read.<sup>6</sup> Petitions from the proprietors were received, but were put over for future action.<sup>7</sup> Morris was, however, authorized to press the president and council of New York relative to the running of the boundary line between the provinces which had been provided for by recent acts of the assembly.<sup>8</sup> Morris also issued commissions naming Isaac Decowe as treasurer of West Jersey, in

<sup>1</sup> *New Jersey Archives*, vol. iii, pp. 380, 381.

<sup>2</sup> *Ibid.*, vol. xiv, p. 116 *et seq.*

<sup>3</sup> *Ibid.*, vol. xiv, pp. 116, 118, 128; vol. iv, p. 400.

<sup>4</sup> *Ibid.*, vol. xiv, pp. 117, 127, 135.

<sup>5</sup> *Ibid.*, vol. xiv, p. 119 *et seq.*

<sup>6</sup> *Ibid.*, vol. xiv, p. 129 *et seq.*

<sup>7</sup> *Ibid.*, vol. iv, p. 408.

<sup>8</sup> *Ibid.*, vol. xiv, p. 134; vol. iv, pp. 446, 448.



room of Basse,<sup>1</sup> and appointing military officers. When his power in the latter field was denied by Major Josiah Ogden, the attorney-general was directed to prosecute him.<sup>2</sup> Morris, in fact, ventured to do nearly everything that a governor would do except to call the assembly. Yet as New Jersey was without a governor from August, 1719, to September, 1720, he probably did no more than was necessary.

As Montgomerie arrived in the province before Burnet retired, the power of the president of the council did not reappear in 1728. Upon Montgomerie's death, however, there was another interregnum, and Morris again assumed the administration.<sup>3</sup> This second presidency lasted from July, 1731, to August, 1732, when Cosby arrived. No very important steps were taken during this period. A proclamation was issued continuing all military and civil officers until further notice.<sup>4</sup> But two sheriffs soon had to be removed upon charges brought against them.<sup>5</sup> A letter was received from the president of New York relating to French encroachments,<sup>6</sup> but the council of New Jersey would merely say that they doubted not but that the king, if he were properly informed, would take proper steps. They were unwilling that the agent of New Jersey should join in making representations on the subject until they knew definitely what was to be solicited.<sup>7</sup> Morris also proclaimed the disallowance by the Crown of three acts of the assembly.<sup>8</sup>

<sup>1</sup> *New Jersey Archives*, vol. xiv, p. 135; *liber AAA of Commissions*.

<sup>2</sup> *Ibid.*, vol. xiv, pp. 137, 138, 139.

<sup>3</sup> *Ibid.*, vol. xiv, p. 455 *et seq.*

During Montgomerie's administration, the movement for a separate governor had made great headway. While acting as president, Morris wrote to the Duke of Newcastle an able letter on the subject, which gave a very fair-minded account of the feeling in the province, and argued in favor of separation from New York.<sup>1</sup> Morris had been told that the duke had recommended him as governor in case of separation, and, though he said that he was not vain enough to ask for such a favor, yet he must state that at the time of the surrender he had been regarded by Queen Anne as not without merit. The home government had, however, not yet made up its mind to the step, and Cosby succeeded, by his influence, in obtaining commissions for both New York and New Jersey.

As we have previously seen, the jealous and avaricious Cosby violently attacked Morris, removed him from the post of chief justice of New York, and urgently recommended that he be removed from the council of New Jersey. To meet this attack, Morris made a journey to England, and eventually succeeded in obtaining a decision in his favor. Before he had returned, however, Cosby was dead. The presidency of the council was therefore assumed by John Anderson, of Monmouth, as the oldest councillor, named first in the instructions, and then in the province.<sup>2</sup> Anderson was a Scot who had many years before commanded a ship in the unfortunate Darien enterprise, and who, upon its failure, removed to New Jersey,<sup>3</sup> where he had long been prominent. Anderson and the council continued all existing officers,<sup>4</sup> and sent a petition to the king

asking a separate government.<sup>1</sup> But a few days later Anderson himself died. The presidency was then assumed by Colonel John Hamilton.<sup>2</sup> Hamilton had been for some time a power in the Jerseys. He was the son and heir of Andrew Hamilton, the last proprietary governor, and himself a prominent member of the Perth Amboy group of proprietors of East Jersey. Upon the withdrawal of Morris, he had been elected his successor as president of the proprietary council of East Jersey. As to his ability, we have little means of judging, though his leadership of the proprietary interests hardly appears to have been successful. He is, however, highly spoken of by contemporaries.<sup>3</sup>

Soon after Hamilton's accession, Lewis Morris arrived in Boston, and immediately put forward his claims to the administration. The result was a contest between Hamilton and Morris for the power, which was scarcely creditable to either. Hamilton took the ground that Morris, by absenting himself from the province without leave, had nullified his right to the presidency and even to a seat in the council. Further, he was not a resident of New Jersey, even if he did maintain a house there, and in any case was not residing in New Jersey when Cosby died, as he was in England. Therefore, when Morris appeared in the council and demanded recognition, Col. Hamilton refused to turn over the administration, and was supported by a majority of the council.<sup>4</sup> Morris maintained that he had been recognized by the home authorities as president of the council, and as proof produced an additional instruc-

<sup>1</sup> *New Jersey Archives*, vol. v, p. 441.

<sup>2</sup> *Ibid.*, vol. xiv, p. 527.

<sup>3</sup> Whitehead, *Contributions to the Early History of Perth Amboy*, p. 168. Hamilton is best known as the first deputy past master general of the colonies.

<sup>4</sup> *New Jersey Archives*, vol. xiv, pp. 538-543.

tion addressed to him under that title.<sup>1</sup> When refused recognition by the council, he proceeded to issue two proclamations as president, one adjourning the assembly still further, and the other setting forth his additional instruction which related to the form of the prayer to be used for the royal family.<sup>2</sup> Hamilton forthwith issued a counter proclamation, ordering all persons to pay no heed to Morris' claims and authorizing his arrest.<sup>3</sup> Both Morris and Hamilton, meanwhile, appealed to the home authorities.<sup>4</sup> But the lords of trade decided in favor of Hamilton, and held Morris' conduct unwarrantable and improper.<sup>5</sup> In June, 1737, the lords of trade wrote to Hamilton stating that Lord Delaware had been named as governor of New York and New Jersey, and would sail with all speed. They desired him to maintain tranquillity until his arrival.<sup>6</sup> All this time, however, the work for a separate governor had been continued, and it was at length successful. Upon the resignation of Delaware, Lewis Morris was appointed governor of New Jersey in spite of what had occurred. But until the arrival of his commission Hamilton retained control.

Under Hamilton's presidency, the council was occupied largely with the quarrel with Morris. Yet other necessary business was, of course, performed. Warrants were signed,<sup>7</sup> and the royal approval of certain acts was entered in the council journal.<sup>8</sup> Complaints against the sheriff of Hunterdon County were considered, and he was removed for misconduct.<sup>9</sup> The ordinance for the sitting of the supreme

<sup>1</sup> *New Jersey Archives*, vol. xiv, p. 538.

<sup>2</sup> *Ibid.*, vol. v, p. 464.

<sup>3</sup> *Ibid.*, vol. v, p. 469.

<sup>4</sup> *Ibid.*, vol. v, pp. 455, 467, 472, 478, 481.

<sup>5</sup> *Ibid.*, vol. v, p. 470.

<sup>6</sup> *Ibid.*, vol. v, p. 469.

court was altered as to the dates.<sup>1</sup> On October 29, 1736, however, the council, considering the smallness of their number and the remoteness of their habitations from each other, requested the president not to call them again except in urgent need, but advised him to issue proclamations and to take all other steps to preserve the royal authority.<sup>2</sup>

Several later meetings were nevertheless held, in which matters of some weight were taken up. Complaints were made as to vexatious suits in the courts. It was held that this was due to the long credit given to the practicing attorneys, and an ordinance was, therefore ordered prohibiting such long credit, and ordering the judges to make proper rules to enforce the decision.<sup>3</sup> Upon petition of the people of the county, it was ordered that justices of the peace and military officers be named for Hunterdon.<sup>4</sup> During the year 1737, however, only four council meetings were held. The council met three times in 1738, under the presidency of Hamilton. It thus appears that during this interval few executive acts were performed, as the president of the council never took any important step without the approval of his fellow councillors. When affairs ran so smoothly without a governor, it is not surprising that at least some people in the Jerseys regarded the support of the royal officials as rather onerous.

The only strictly provincial offices in the Jerseys which were held by royal patent were those of provincial secretary and attorney-general.<sup>5</sup> The history of these offices during our period certainly carries out the statement of Burnet, that "patent offices appointed in Great Britain are gener-

The post of secretary was first obtained by Jeremiah Basse, in spite of counter efforts of Peter Sonmans.<sup>1</sup> Basse took a leading part in various acts of maladministration during the rule of Cornbury and Ingoldsby. Upon the accession of Hunter, however, he came into conflict with the chief executive, who was evidently unwilling to suspend him, because of his position as a patent officer. To punish him the assembly passed and the governor approved, in March, 1713-14, three acts greatly reducing his fees. These were "an act for shortening lawsuits and regulating the practice of the law," "an act for enforcing the ordinance for establishing fees," and "an act for acknowledging and recording of deeds and conveyances of land in each county of this province."<sup>2</sup>

When, however, the home authorities, listening to the complaints of Hunter, gave James Smith the royal patent, these acts were not repealed.<sup>3</sup> Smith naturally represented the case to the lords of trade, and eventually, in April, 1722, Governor Burnet laid before the council a letter from that body, directing him to move the assembly to repeal the acts. The governor, therefore, submitted a bill prepared by the chief justice to accomplish the required result.<sup>4</sup> This bill, with the letter from the board of trade, was sent down to the assembly,<sup>5</sup> but the latter body would not pass it. Burnet, nevertheless, foiled an attempt made by the house, at the instigation of his enemy Willocks, to enact a bill requiring the secretary to give a security which he regarded as ruinous.<sup>6</sup>

In 1721 the three acts interfering with Smith's emoluments had been, however, disallowed by the crown.<sup>7</sup>

But in 1728, after Burnet and his assembly had come into entire agreement, the governor himself consented to the reenacting of the bills for "shortening of lawsuits" and "concerning the acknowledging and registering of deeds, etc."<sup>1</sup> At the same time £25 per annum was voted to Smith as a compensation. He accepted this sum as the best thing he could obtain at the time.

But when Montgomerie succeeded to the administration, the secretary memorialized the lords of trade again, declaring that Burnet had acted from motives of personal gain, and that he had coerced Smith.<sup>2</sup> In 1731 the troublesome laws were once more disallowed by the king in council.<sup>3</sup> In spite of this second disallowance, an effort was made to repass the measures under Cosby,<sup>4</sup> and "an act for the better enforcing an ordinance made for establishing fees" was actually passed.<sup>5</sup> But this measure, too, was again vetoed by the crown.<sup>6</sup>

In spite of his efforts to prevent the cutting down of the income of his office, James Smith seems to have been a respectable person. He appears, however, to have turned his post into a sinecure, residing regularly at Philadelphia, and executing his duties through two deputies.<sup>7</sup>

Alexander Griffith, the attorney-general under Cornbury, also held a royal patent.<sup>8</sup> He was, however, eventually suspended by Hunter for endeavoring to shield Sonmans and other confederates of Cornbury's clique, in direct disregard of the orders of the governor in council.<sup>9</sup> Gordon was then named as commissioner to execute the office. The later at-

<sup>1</sup> *New Jersey Archives*, vol. xiv, pp. 388-389.    <sup>2</sup> *Ibid.*, vol. v, p. 198.

<sup>3</sup> *Ibid.*, vol. xiv, pp. 471, 472.

<sup>4</sup> *Ibid.*, vol. xiv, pp. 478, 479.

<sup>5</sup> *Ibid.*, vol. xiv, p. 502.

<sup>6</sup> *Ibid.*, vol. xiv, p. 515.

<sup>7</sup> *Ibid.*, vol. v, p. 321.

<sup>8</sup> *Ibid.*, vol. xiii, p. 302.

<sup>9</sup> *Ibid.*, vol. xiii, p. 561.

torneys-general were Basse, Alexander, Lawrence Smyth, and Joseph Warrell.

Besides these strictly provincial officers, there were also several royal appointees whose powers extended over all or a considerable part of the colonies, who exercised duties in the Jerseys. Such were the surveyor-general of customs and the surveyor-general of His Majesty's Woods. In the former office Colonel Robert Quarry was especially active under Cornbury, Lovelace and Hunter. Perhaps the bad reputation of the Jerseys for smuggling may account for this activity.

Customs officers were, of course, maintained in the colony. John White was the first collector of customs at Amboy,<sup>1</sup> while John Jewell was surveyor of customs for all West Jersey.<sup>2</sup> These officers had full power to examine goods, collect duties and make seizures, yet the control of a single surveyor of customs for each division could not have been very effective. All the officers appear, however, to have been assisted by deputies. The earlier commissions were given directly by the commissioners of the customs in England, but the later ones were from Quarry and other colonial surveyors-general. But, after all, there were fewer officers representing the royal power directly in the Jerseys than in several of the other provinces. New Jersey was a small province, and not at all liberal in the payment of her officials. There was apparently no very urgent demand in London for appointment to executive offices there.

Among the offices regularly commissioned by the gov-

<sup>1</sup> John White was succeeded by Thomas Farmar. In 1710 Farmer was suspended and Henry Swift named.



ernors, several were judicial or semi-judicial. Such were the chief justice, the second judge and other associate provincial judges, the county judges of the pleas, commissioners of oyer and terminer, and the justices of the peace. Besides these, the governors named the receivers-general or treasurers, as they later come to be almost exclusively called, the sheriffs, and the officers of the militia. Persons were also commissioned to execute the office of attorney general when no royal patent had been issued.<sup>1</sup> The duties of several of these officers, and the changes in the character of their posts, will be treated more fully in the chapters relating to the several departments of the administration.

As in practically all the provinces, there were certain commissioners exercising what were practically executive functions, who were named in acts of assembly, and who were responsible to the legislative branch rather than to the governor. Such were the commissioners for laying out highways, the commissioners for signing the bills of credit, and the tax collectors of the several counties and localities.

It must be remembered, too, that certain very important administrative officers were agents of the proprietors. Among these were the surveyors-general of the two divisions, the proprietary registers, and the receiver-general of quit-rents of East Jersey. The continued existence of the proprietorship under the royal rule is, of course, one of the distinguishing features of the system of New Jersey, as compared with those of other royal provinces.

In accordance with the governor's instructions, the commissions of the subordinate officers were unlimited as to time, that they might be more fearless in the execution of their duties.<sup>2</sup> The sheriffs were, however, named each year. Yet,

owing to the political conditions of the Jerseys, removals were rather frequent. After the overthrow of Cornbury's clique, the higher officers appear to have been fairly honest and efficient, and several, like Alexander, Hooper and James Smith, had long terms. But among the holders of the lesser posts some were amazingly careless and corrupt.

It has already been made apparent that there was a tendency to concentrate several offices in the same hands. The members of Cornbury's council were practically all named as associate provincial or county judges and as militia officers. Basse was not only provincial secretary, but clerk of the council, clerk of the supreme court and deputy collector of customs. James Alexander was attorney general and surveyor-general of both Jerseys. James Smith had not only the posts held by Basse, but also the proprietary registership. But this monopoly of office by rings of prominent persons was a common, perhaps, indeed, a necessary feature, of all American provincial government.

## CHAPTER XV

### THE COUNCIL—PERSONNEL

ONE great source of strength in the council of the province of New Jersey undoubtedly lay in the character of the men who composed it. The advisers of the crown certainly tried to select the most able and influential persons for membership, and, speaking in general, they did so, though their intentions were at times thwarted by the misrepresentations of such governors as Cornbury and Cosby.

As soon as it became certain that the proprietors intended to surrender the government of the Jerseys to the crown, a struggle began regarding the constitution of the council. This conflict was between the majority share-owners of the two Jerseys, called by their opponents the "Scotch and Quaker factions," and the minority party in East Jersey, led by Dockwra, and supported by the Coxe interest and its allies in West Jersey.<sup>1</sup> Neither party won a complete victory, though the controlling element in proprietary affairs was scarcely as fully recognized as it might fairly have been expected to be. Six of the twelve members of the council, as named in Cornbury's instructions,<sup>2</sup> were prominent proprietors—Hunloke, Morris, Jennings, Davenport, Leonard, and Deacon.—Of these Morris, Jennings and Davenport were especially unacceptable to the anti-proprietary party. Moreover, Hunloke, as first named, would preside over the

<sup>1</sup> *New Jersey Archives*, vol. ii. pp. 417, 429, 430, 487, 502.

<sup>2</sup> *Ibid.*, vol. ii, p. 507.

council in case of the absence of the governor and lieutenant-governor, while Morris was next in the line of succession.<sup>1</sup> On the other hand, the council contained Andrew Bowne,<sup>2</sup> Sandford and Pinhorn of East Jersey, and Revell and Leeds of West Jersey, who were all more or less out of sympathy with the proprietors, or at least with the "Scotch and Quaker interest." Robert Quarry, who, as surveyor-general of customs, was included in the council from the beginning, also showed antagonism to the proprietors.<sup>3</sup> Walker, the remaining member, took no decided stand. Thus the malcontents were sure to have their side of the case well represented, and, if fortune favored, might easily control the policy of the upper house.

Two of the council were of unusual ability, a rather dangerous quality in members of a body the work of which was largely advisory. These were Lewis Morris and Samuel Jennings, the ex-governor of West Jersey, whose characters and earlier careers have already been considered. The rest were men of ordinary stamp. Andrew Bowne, of Monmouth County, had taken a very active part in the affairs of East Jersey, figuring as a supporter of Basse and the bitter foe of the proprietors. For a time, during the absence of Basse, he had been deputy governor of East Jersey.<sup>4</sup> But he was now too old for active work.<sup>5</sup> Francis Davenport was a leading Friend, who had been at one time president of the council of proprietors of West Jersey. Daniel Leeds had been one of the chief agents of Coxe, and later of the West Jersey Society, and was for a time summer general of the Western Division. But he was

County, and William Pinhorne, of Snake Hill, were large landowners of East Jersey, and men of fair character and attainments. Pinhorne had, however, formerly played a prominent part in the politics of New York, and had been dismissed from a judgeship by Bellomont for alleged misconduct.<sup>1</sup> Hunloke and Leonard were respected, but both died before they entered upon office.<sup>2</sup> Quarry was a zealous and honest official, whose character was esteemed even by his opponents in New Jersey.<sup>3</sup> Jennings, Davenport and Deacon were Quakers, and the Crown deserves credit for including them. Hunloke and Leonard were zealous "sticklers for Quakers."<sup>4</sup>

The death of Hunloke and Leonard was a stroke of fortune for the anti-proprietary party, as it gave them a majority. Neither party could, however, hope to control the council without the support of Cornbury. From the beginning his lordship showed his suspicion of the Quakers, for at the first meeting he actually entertained, in spite of the explicit wording of his instructions, objections to qualifying Jennings, Davenport and Deacon, because they could not take the oaths. The Quakers themselves appealed to the instructions, and Cornbury, upon "looking further," felt obliged to admit them under the fifty-third article. The incident proved to his mind that Morris had brought a copy of his instructions from England.<sup>5</sup> Cornbury, in his first letter home, informed the lords of trade that it was not necessary to put Quakers into the council because so few others were qualified, as had been alleged. He understood, also, that they would oppose a militia act.<sup>6</sup> The governor

therefore asked the wholly unnecessary question as to what he must do in future regarding the Friends.

In spite of his dislike of the Quakers, however, Cornbury at first inclined toward the proprietary party, which had a majority in the assembly, and therefore could bestow favors upon the governor.<sup>1</sup> But the failure of his lordship to obtain a satisfactory emolument at their hands, and the making of the "deal" between himself, Coxe and the anti-proprietary party for their mutual advantage, have already been stated. The alliance between Cornbury and the opponents of the proprietors brought the most important consequences for the council. William Dockwra had already recommended the appointment of Peter Sonmans to the place left vacant by the death of Leonard, representing him as "agent" of the English proprietors.<sup>2</sup> By using the term "proprietors in England," Dockwra, of course, implied large shareholders who were more or less at variance with the Scots of Perth Amboy, but actually these "English proprietors" were a small ring led by Dockwra himself, and controlling not more than five or six of the twenty-four shares of East Jersey. The claims of Daniel Coxe, Jr., were also advanced, though apparently not by Dockwra directly.<sup>3</sup> Indignant protests against these appointments were, however, entered by the West Jersey Society.<sup>4</sup> But Cornbury himself now recommended for the vacancies Daniel Coxe and Col. Townley, of Elizabethtown, and, as a third vacancy resulted from the death of Walker, he put forward Roger Mompesson, whom he had already named chief justice.<sup>5</sup> All these persons were, of course, unopposed.

The adherence of Cornbury to the anti-proprietary faction almost at once brought him into violent conflict with Lewis Morris, who possessed courage in a high degree, and who was always inclined to take direct and even violent means to enforce his rights. Morris at once asserted that the conduct of Cornbury, in refusing to safeguard the rights of the proprietors, was a violation of the conditions upon which the province had been surrendered.<sup>1</sup> As the purposes of the governor became clearer, Morris refused to obey his orders or to attend meetings of the council, while, on the other hand, he took a leading part in organizing the opposition to Cornbury. There is no doubt that the able Morris was fully informed as to the underhand dealings of his lordship, and knew that the proprietors could save themselves only by open war. Cornbury therefore suspended Morris from the council, but a temporary reconciliation was effected through Dr. Innis, the Anglican clergyman of Monmouth County.<sup>2</sup> When Cornbury managed to capture the second assembly, however, Morris endeavored to defeat the passage of the legislation upon which the allies had agreed, and Cornbury, representing this as an attempt to defeat the Queen's service, suspended Morris again, and notified the home authorities.<sup>3</sup>

The loss of Morris was soon followed by that of Samuel Jennings, who also recognized the impossibility of resisting Cornbury within the council, and who did not have the same influence and wealth to rely upon in opposing the governor. He therefore resigned from the council on the plea that he could not afford the expense involved.<sup>4</sup> The two ex-councillors Morris and Jennings became at once

secured election to the third assembly, of which Jennings was chosen speaker, and their bravery and determination enabled the representatives to make the celebrated stand against the outrageous corruption of Cornbury which resulted at last in his overthrow. When Cornbury forced into fierce opposition the two ablest men of the colony, his blunder was fatal.

Meanwhile the home government had supplied the vacancies in the council by naming Coxe, Townley and Mompesson, in accordance with the wishes of Cornbury.<sup>1</sup> All three of these were to be prominent in the politics of the province, and, second only to the royal governors and Morris, Col. Coxe was to be a leader in affairs during almost the entire period. He was the son of Dr. Daniel Coxe, who had purchased the original rights of Edward Byllinge, and later had sold the greater part of his interests to the West Jersey Society. As his father was one of the court physicians of Queen Anne, and widely known, Col. Coxe possessed considerable influence with the home government.<sup>2</sup> As representative of the Coxe interests in the Jerseys, he stood in general opposition both to the Quaker proprietors, who controlled the council of proprietors, and to Morris, the agent of the West Jersey Society. It was therefore natural that he should be an ardent supporter of Anglicanism, and one of the leading spirits in St. Mary's Church of Burlington, where for a time he resided. In character he was energetic, scheming and contentious, like Morris, his rival. Hunter, who later came to the province, called him "a native fool".<sup>3</sup>



scrupulous in his methods, and his connection with Cornbury is, of course, discreditable. Later, however, he did much to retrieve his reputation, serving on the bench of the province with credit, and holding the post of president of the council of West Jersey proprietors.<sup>1</sup>

Townley and Mompesson were tools. Col. Richard Townley, though of Elizabethtown, was an Anglican and a Jacobite. Born of good family in England, he had retrieved a broken fortune by a marriage with the widow of Governor Carteret. Col. Townley seems to have borne an excellent character among his townsmen, and is remembered chiefly because of his efforts in founding and maintaining St. John's Anglican Church in this hostile ground.<sup>2</sup> Apparently, however, he was not a man of marked character, and was willing to approve of the ill-concealed corruption of Cornbury and his ring. Mompesson was a London lawyer, who had recently arrived in America, and who had been made chief justice of New York and New Jersey. He appears to have been an ably-trained lawyer, but, like Townley, was willing to be Cornbury's confederate. Mompesson became the son-in-law of Judge Pinhorne, with whom he remained closely associated.<sup>3</sup> He deserves at least the credit for having been a less resolute knave than most of those who surrounded Cornbury.

The efforts of the "English proprietors" to secure the appointment of Peter Sonmans continued,<sup>4</sup> but the opposition caused the lords of trade to take the precaution of asking Cornbury's opinion regarding his suitability.<sup>5</sup> That

<sup>1</sup> *New Jersey Archives*, vol. iii, p. 116 (note). Cox is noted especially as the author of one of the earliest plans of colonial union.

high authority replied that he thought Sonmans very suitable, since he had always acted "with respect to the government."<sup>1</sup> Upon the retirement of Jennings, Cornbury recommended Sonmans for the place,<sup>2</sup> and the appointment was eventually made.<sup>3</sup> Peter Sonmans must have been in some respects a superior man, yet all the evidence goes to show that his career was one of the worst that the early history of New Jersey presents. He was a Hollander by birth, and had been educated in the University of Leyden, but had later removed to England, and had held several considerable public posts there under William III. His father was Arent Sonmans, one of the original twenty-four proprietors of East Jersey, and from him Peter Sonmans inherited large proprietary interests.<sup>4</sup> In England he seems to have been closely associated with Dockwra, and through him received a commission as "agent" of the "English proprietors."<sup>5</sup> As a member of the council of New Jersey, however, he became, with Coxe and Basse, a leader of Cornbury's notorious clique. In certain proceedings in the Courts of Middlesex County, he was guilty of injustice and misconduct. So deeply involved was he that his conduct became one of the special subjects of complaint against the administration,<sup>6</sup> and, upon the retirement of Cornbury, he was indicted for perjury and other high crimes.<sup>7</sup> At a later period he was apprehended in what was apparently deliberate fraud and embezzlement of proprietary funds.<sup>8</sup>

<sup>1</sup> *New Jersey Archives*, vol. iii, p. 154.

<sup>2</sup> *Ibid.*, vol. iii, p. 160.

<sup>3</sup> *Ibid.*, vol. iii, p. 339.

<sup>4</sup> Whitehead, *Contributions to the Early History of Perth Amboy*, p. 76.

<sup>5</sup> *Liber AAA of Commissions*, p. 38.

<sup>6</sup> *New Jersey Archives*, vol. iii, p. 374.

<sup>7</sup> *Ibid.*, vol. iii, p. 378; *Minutes of the Supreme Court (1704-1715)*, pp. 80-1.

<sup>8</sup> *Ibid.*, vol. v, p. 124.

Yet such was the adroitness and skill with which he defended himself when under prosecution, that he succeeded in avoiding serious punishment. The lengthy memorials and communications in which he defended himself show clearly his education and ability, but are also good evidence of his misconduct.<sup>1</sup> As to his private character, it is fitting after this lapse of time, to say no more than that it was not above reproach, though he paraded his zeal as a churchman. That it was possible for such a man to play so prominent a part for so long a time shows clearly the laxity of the provincial government.

Such was the constitution of the council which supported Cornbury. During his rule, however, Davenport, Revell and Bowne were unable to play a very active part because of age.<sup>2</sup> Upon one point Cornbury met direct defeat. This was regarding the suspension of Morris. No sooner was the suspension announced than efforts began to be made to secure his restoration, especially by the influential West Jersey Society, of which he was agent.<sup>3</sup> The lords of trade soon directed Cornbury to restore Morris, though they thought it fitting that he should first make "submission" to the governor.<sup>4</sup> Cornbury expressed his willingness to obey, but said he had no idea that Morris would "submit." This outcome was virtually a victory for Morris, as he boasted that he could take his place in the council when he chose, and the opposition to the governor was strengthened and encouraged.<sup>5</sup> Morris, however, rightly judged that it would avail him little to sit in a hopeless minority in the council. Instead, he preferred to act in the assembly, where, as has been indicated, he was, with Jennings, the leading spirit.

When Cornbury was succeeded by Lovelace, even the

lords of trade understood that a change in the council was necessary. The West Jersey Society made representations against Coxe, Sonmans, Revell, Leeds and Quarry,<sup>1</sup> but the home government acted only against Leeds and Revell, because of their indefensible conduct in abetting Cornbury in keeping the three West Jersey members out of the second assembly. The advice of William Penn was asked, and his opinion was that Revell and Leeds should be dropped.<sup>2</sup> Their names were accordingly omitted from Lovelace's instructions.<sup>3</sup> Their punishment was, indeed, deserved; yet, after all, they appear to have been mere tools, and far less dangerous than Coxe and Sonmans. Nor was the choice as their successors of Hugh Huddy, of Burlington, and William Hall, of Salem, a happy one. These men had, however, been recommended with others by the West Jersey Society.<sup>4</sup>

Hugh Huddy was the person to whom Cornbury had granted that monopoly of the highway between Amboy and Burlington, which had been one of the grievances in the great remonstrance of 1707.<sup>5</sup> Hunter described him as a weak old man, readily led by the members of Cornbury's ring,<sup>6</sup> and his career seems to justify this characterization, as he proved always ready to follow the lead of Coxe. Of William Hall's character and personality little is known, but, like Huddy, he soon became a prominent member of the hateful administrative clique, and was accused of abuses of power second only to those of Sonmans.<sup>7</sup> Hall had formerly been a Quaker, but now soon began to show zeal for the Anglican church—a fact which may in some degree

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account for the peculiar bitterness with which he was regarded in West Jersey.<sup>1</sup> The accession of these two members to the "ring" was partly overset by the formal restoration of Lewis Morris to the presidency of the council, for in Lovelace's instructions his name led all the rest.

Before Lovelace arrived Davenport and Andrew Bowne were dead. Cornbury notified the lords of this fact and recommended successors, but the vacancies were allowed to stand.<sup>2</sup> The brief administration of Lovelace brought no further changes in the constitution of the council.

One of the first acts of Lieutenant-governor Ingoldsby was to re-suspend the devoted Morris,<sup>3</sup> who had greatly enraged his colleagues by acting entirely independent of them during the rule of Lovelace.<sup>4</sup> As Ingoldsby did not dare to suspend Morris upon his own responsibility, an address to the lieutenant-governor, accusing him of causing the disorders of the province, and asking for his permanent removal, was prepared and signed by Pinhorne, Townley, Coxe, Sonmans and Huddy.<sup>5</sup> It was then entered on the council records that Morris was suspended for the reasons given in the address. Ingoldsby also wrote to the lords relative to the vacancies existing in the council,<sup>6</sup> but all his recommendations were ignored. The lords of trade recommended that Morris be restored, since his suspension had been upon insufficient grounds, and that Thomas Gordon and Thomas Gardiner be put into the vacancies.<sup>7</sup> This recommendation was carried out when Governor Hunter was commissioned in 1709. But though the West Jersey Society made strong representations against continuing Coxe, Sonmans and their clique,<sup>8</sup> the lords did not have

<sup>1</sup> *New Jersey Archives*, vol. iv, pp. 125, 157.    <sup>2</sup> *Ibid.*, vol. iii, p. 340.

<sup>3</sup> *Ibid.*, vol. xiii, pp. 367-9.

<sup>4</sup> *Ibid.*, vol. iii, pp. 380, 381.

<sup>5</sup> *Ibid.*, vol. iii, p. 464.

<sup>6</sup> *Ibid.*, vol. iii, p. 463.

<sup>7</sup> *Ibid.*, vol. iii, p. 499.

<sup>8</sup> *Ibid.*, vol. iii, p. 497.

penetration enough to see the necessity of retiring them. Thus the new governor was called upon to do battle with a ring of corruptionists well intrenched in power.<sup>1</sup> There was some gain for the proprietary party, however, in the retirement of Ingoldsby and the naming of Gordon and Gardiner.

The earlier career of Thomas Gordon has already been touched upon.<sup>2</sup> A Scot by birth, a university man by education, he was one of the leading members of the Amboy clique of proprietors of East Jersey. As speaker of the assembly, after the illness of Jennings, he had taken an active part in the conflict with Cornbury, and had suffered real persecution at the hands of his lordship and Peter Sonmans.<sup>3</sup> Gordon was one of the few attorneys in the province, and his experience certainly qualified him for a place in the council. But while the career of Gordon was active, he gave no proof of signal ability. Under Hunter he became treasurer of the province, but finally got into an unfortunate tangle over his accounts, which were adjudged by the assembly to be many pounds short, and died before it was shown that the difficulty was due to a mere error in book-keeping.<sup>4</sup> Like so many of the council, Gordon was an active churchman.<sup>5</sup> Thomas Gardiner, on the other hand, was a West Jersey Friend, a son of one of the early settlers of Burlington, himself a proprietor and a member of the council of proprietors. To some degree he was the successor of Jennings as the political leader of the Quakers, and he had just distinguished himself for his bravery in

<sup>1</sup> *New Jersey Archives*, vol. iv, p. 2.

<sup>2</sup> For a summary of Gordon's career see Whitehead, *Contributions to the Early History of Perth Amboy*, n. 60. *et seq.*

opposing the expedition to Canada.<sup>1</sup> Later he became one of Hunter's chosen advisers.<sup>2</sup>

There is no evidence to show that Hunter had determined upon his attitude toward the party in control of the council before he assumed the administration. But his experience with his first assembly convinced him that Cornbury's clique were adopting a policy of mere obstruction, with a view to making political capital. He also saw that the difference between the parties was irreconcilable. Therefore, in his very first lengthy communication to the home government relating to New Jersey affairs, Hunter informed them that political tranquillity in the province would be impossible while Sonmans, Coxe, Pinhorne and Hall remained in the council. Mompesson and Huddy he regarded as weak men, led astray by the four mentioned. Quarry was, he believed, an able and honorable officer, who had been temporarily mistaken in his policy.<sup>3</sup> The recommendation that four such prominent men be removed was a bold one. Hunter's task of clearing out the old ring was, however, somewhat lightened by the fact that Townley died at about the time that he arrived in America,<sup>4</sup> and that Sandford,<sup>5</sup> and a little later Mompesson, voluntarily retired.<sup>6</sup>

The usual lengthy delay followed Hunter's recommendations as to removal. His suggestions were carefully considered by his various superiors in England, and meanwhile several influences were at work for and against the governor. The West Jersey Society, led by its energetic vice-president, Edward Richier, aided his efforts, endeavoring

<sup>1</sup> *New Jersey Archives*, vol. iii, p. 462.

<sup>2</sup> *Ibid.*, vol. iv, p. 119; Smith, *New Jersey*, p. 401.

<sup>3</sup> *New Jersey Archives*, vol. iv, p. 61.

<sup>4</sup> *Ibid.*, vol. iv, p. 61.

<sup>5</sup> *Ibid.*, vol. iv, p. 60.

<sup>6</sup> He attended no meetings after July, 1711. Pinhorne did not attend after the first assembly.

at the same time to secure the appointment to the council of persons satisfactory to it.<sup>1</sup> Dockwra, as usual, acted as the mouthpiece for Coxe, and the council ring, submitting to Secretary Popple a long communication from an unnamed member of the council, vigorously attacking Hunter.<sup>2</sup> A new element in the discussion was added by the Rev. Jacob Henderson, an Anglican missionary of Pennsylvania, who represented Hunter's whole conduct as an attack upon the Church of England.<sup>3</sup> The delay was so long that Hunter, embarrassed as he was, wrote twice to the home authorities urging action.<sup>4</sup> Finally, after a delay of over two years, the lords recommended that Coxe, Sonmans, Pinhorne and Hall be removed, and that John Anderson, William Morris, John Hamilton and John Reading be appointed in their places, while Elisha Parker and Thomas Byerly were named for the two vacancies. The crown confirmed all the persons named except William Morris, who died while the matter was pending.<sup>5</sup>

The sweeping change in the council was a great victory for Hunter, and at the same time a true proof of his statesmanship. It brought about complete harmony between governor and council,<sup>6</sup> and the latter body was once more made respectable. Yet it cannot be said that the new members were persons of commanding abilities. The two most notable were Col. John Hamilton and John Anderson, whose careers have been touched upon in the section upon the presidency of the council, to which post both eventually succeeded. John Reading was another West Jersey proprietor, who, though not himself a Quaker,<sup>7</sup> was closely

<sup>1</sup> *New Jersey Archives*, vol. iv, pp. 115, 141, 152.



identified with them, and known chiefly as the clerk of the council of proprietors.<sup>1</sup> Thomas Byerly was collector of customs at New York, but held proprietary interests in the Jerseys.<sup>2</sup>

The change thus effected was the crucial one as regards the character of the council. From this time on, during the union period, with the exception of the short rule of Cosby, the council remained entirely under the control of the governor and of the proprietary party. Changes in the membership were due to death or resignation, and had no great political significance. With one exception, the council did not contain men of unusual parts. Yet its membership, after Hunter's time, did fairly represent such wealth and ability as the province possessed. The council plays a less prominent part, because it did not cause violent contentions with the governor and assembly, but it did its duty more effectively through its policy of quiet agreement in the wise policies of Hunter and Burnet.

During the administration of Hunter, further vacancies were caused by the death of Quarry, Mompesson, Gardiner,<sup>3</sup> Reading, Huddy, and Elisha Parker.<sup>4</sup> At one time, owing to the difficulty in obtaining a quorum, Hunter was forced to exercise his power of making temporary appointments, naming Dr. John Johnstone and John Parker, of Perth Amboy, and Peter Fretwell and John Hugg, two Quakers of West Jersey.<sup>5</sup> These appointments were eventually confirmed. David Lyell, of Amboy, and John Wills, of the Western Division, were also given places.<sup>6</sup> The home authorities, in accepting these persons, willingly followed

<sup>1</sup> *New Jersey Archives*, vol. iv, D. 62 (note).

Hunter's wishes, as his success had secured their confidence. There were, however, the usual delays and misunderstandings due to the slowness of communication and the cumbersome character of the British colonial system.<sup>1</sup> A touch of humanity appears in one instance; when, owing to a mistake, the lords of trade removed, as superannuated, George Deacon, Hunter wrote back asking that the step be rescinded, as Deacon had been faithful, and removal would break the old man's heart.<sup>2</sup> It was nevertheless a source of weakness to the council that several of its members were likely to be too old for active service. Neither Deacon nor Byerly could at this time attend meetings held at any distance from their homes.<sup>3</sup>

Of the members named in the latter part of Hunter's time, John Johnstone and David Lyell were the most notable. Johnstone, like Thomas Gordon, had already had a long career in New Jersey.<sup>4</sup> He had originally been a chemist in Edinburgh, and hence was usually called Dr. Johnstone. Being associated with George Scot, of Pitlochrie, in inducing immigration to East Jersey from Scotland, Johnstone had removed to the colony himself in 1685. For his work with Scot he was rewarded by several large land grants from the proprietors, and took a very active share in proprietary affairs. He resided chiefly in New York, although interested in the Jerseys, and took some part in the affairs of that colony also. Johnstone was a friend of Hunter, and seems to have had many fine traits of character. He was, however, unscrupulous in his political

he opposed.<sup>1</sup> David Lyell was also an active member of the Amboy group of Scotch proprietors.<sup>2</sup> John Parker was the son of Elisha Parker, and son-in-law of Dr. Johnstone. Though resident at Amboy, he was a merchant in New York.<sup>3</sup> It is certainly very noticeable how completely the Amboy element in East Jersey and the Quakers of Burlington and their allies dominated the council under Hunter.

Just before the close of his rule two new appointments were made: John Reading, son of the former councilor, and Peter Bard, a naturalized Huguenot merchant, resident in Burlington.

In the instructions of Burnet no changes in the council were made. It now consisted of Morris, Gordon, Anderson, Hamilton, Byerly, Lyell, Parker, Wills, Hugg, Johnstone, Reading and Bard.<sup>4</sup> Burnet had, however, scarcely begun his administration before vacancies resulted from the death of Gordon and Byerly. To these places, upon the governor's recommendation, James Alexander, the surveyor-general of the province, and James Smith, its secretary, were named.<sup>5</sup>

James Alexander undoubtedly stood next to Morris as the most able person in the public life of the province. He was of noble birth in Scotland, recognized as heir to the title of Earl of Sterling, but he had joined the cause of the Pretender in 1715, and, after his defeat, thought it best to withdraw to the colonies. He had been well educated, especially in mathematics, and had served in the Stuart army as an engineer officer. In New York, Alexander, in spite of their opposition in political principles, formed a friend-

ship with his fellow Scot, Governor Hunter, through whose assistance he rose to prominence. When he came to America, he brought with him authority from several of the proprietors of East Jersey to look after their interests,<sup>1</sup> and he almost at once began to take an active part in proprietary affairs. Later he was named as surveyor-general of both the Jerseys,<sup>2</sup> as well as of New York. Meanwhile Alexander took up the study of law, and was soon recognized as the ablest lawyer in New York. In the course of his long public career he held numerous high offices in both New Jersey and New York, and seems to have acquired distinction in all. The private character of Alexander was of the highest type, and he was a scholar and scientist of ability, one of the founders of the American Philosophical Society.<sup>3</sup>

Yet, great as were the services of James Alexander, he is known to the student of New Jersey history chiefly because he was the author of the Elizabethtown Bill in Chancery, and the father of Lord Sterling, the revolutionary general. These are no mean titles to remembrance, but they should scarcely outweigh the meritorious service of a lifetime.

The beginning of Burnet's administration was marked also by another suspension. Burnet, undoubtedly with much reason, believed that George Willocks was responsible for the opposition offered to him by his first assembly. As Willocks was a professed Jacobite, Burnet declared him to be an enemy of the government. But John Anderson said in the council that he did not take Willocks to be an enemy

The governor appears to have been rather hasty in the matter, no doubt being chagrined at the opposition and annoyance offered him. The lords seem to have taken no action and after a time Burnet himself removed the suspension and restored Anderson to his place.<sup>1</sup>

The only other change in the council under Burnet seems to have been the appointment of Cornelius Van Horn, in 1727, to the place made vacant by the death of David Lyell.<sup>2</sup> There was no further alteration during the brief rule of Montgomerie, though a vacancy was caused by the death of Hugg.<sup>3</sup>

Upon the arrival of Cosby, however, there were new developments, due chiefly to the bitter quarrel originating in New York affairs between the governor and Morris and Alexander. Cosby's attack upon the positions and characters of the two gentlemen was of so crude and violent a nature as to reveal clearly the motives lying behind it. He recommended to the home government that both of these distinguished men be removed from the council,<sup>4</sup> and the lords of trade actually submitted to the Crown the names of successors.<sup>5</sup> Neither Morris nor Alexander attended any meetings under Cosby, the former, indeed, making a journey to England to appeal personally against the unjust conduct of the governor. Morris's mission, as we know, resulted in his complete vindication and restoration to the post of chief justice of New York, a place which he was soon to exchange for the governorship of the Jerseys.

Since the death of Quarry no customs officer had held a place in the council of New Jersey. Soon after the appoint-

ment of Cosby, however, John Peagrim, the surveyor-general of customs of the district, was given a place, though he manifested much less activity and interest in the affairs of the Jerseys than Quarry had done.<sup>1</sup> Meanwhile a number of vacancies in the council occurred through the deaths of Hugg, Bard, Johnstone, Parker and James Smith. To the first vacancy, William Provost, who had been recommended by Morris during his presidency, was named.<sup>2</sup> For the other places Cosby recommended Thomas Farmar, who had so long been second judge; John Schuyler, famous as the owner of the copper mine in Bergen County, of which such frequent mention is made, Dr. John Rodman and Richard Smith.<sup>3</sup> The lords complained that these gentlemen made no efforts to have their warrants passed, and stated that if their neglect continued it would be necessary to appoint other persons in their stead.<sup>4</sup> This step was not taken, however, and during Cosby's rule the council remained short-handed. Cosby finally put Farmar into the council to secure a quorum,<sup>5</sup> but the other persons recommended did not take their seats until the next administration.

With the exception of Morris and Alexander, the members of the council seem to have been on good terms with Cosby. Hamilton and Anderson appear to have been in special favor, and we may guess that the council, as a whole, was not sorry to be relieved of the predominating influence of Morris and Alexander.<sup>6</sup> The endeavor of Morris, after the death of Cosby, to assert his right to the presidency of the council, and the resulting conflict with Hamilton and the majority of the council, have been treated in the section on

the death of Cosby, no further changes in the personnel of the council took place until the issue of the instructions to Governor Lewis Morris.

During the latter part of the union period, when feeling in favor of a separate executive was growing in the Jerseys, complaint was frequently heard that many members of the council were residents of other colonies. As has been stated in another section, a formal address was made on this point by the assembly to Governor Cosby.<sup>1</sup> Considering the union period as a whole, we must certainly be struck by the fact that a number of the most prominent councilors did not reside continuously in the Jerseys. Among these, Lewis Morris, Alexander, Johnstone, Mompesson and Byerly lived in New York, while Quarry, James Smith and Coxe were residents of Philadelphia. Most of these men, however, lived at various times in the Jerseys, and Morris always maintained an estate at Shrewsbury. All except Mompesson, Quarry and Smith held important proprietary interests, and Morris, Alexander, Coxe and Johnstone were perhaps the leading political forces in the public affairs of the Jerseys. But, at the same time, nearly all of the non-resident councilors were taking an active part in the political life of New York and other colonies, and hence did not give their whole attention to Jersey affairs.

The council was therefore fairly representative of the leading political interests in the province, though hardly of its native talent. It now remains to be shown what share the council actually took as a body in the work of administration and government.

## CHAPTER XVI

### THE COUNCIL—ITS LEGAL POSITION

WHEN New Jersey became a royal province, what we may call the typical form of provincial government had already become well established in the custom of the home government, as well as in the thought of the American colonists themselves. The new province was therefore given, with some few relatively unimportant concessions to local conditions, the usual organs of government. Of these the governor's council was one of the most important. The legislative, judicial, administrative and advisory powers were essentially the same as those possessed by the councils of all the other royal colonies.

Cornbury's commission directed that he should rule according to his commission and instructions, and according to such reasonable laws as should be agreed upon by him, with the consent and advice of the council and the assembly.<sup>1</sup> The council was thus at the beginning made the upper house of the legislature of the province. Cornbury was to administer the oaths of allegiance to the council immediately after the publication of his commission,<sup>2</sup> and though he did not have the power to make permanent appointments to the council, he did have full authority to suspend all members. But in case of any vacancy by death, suspension, or other-



ernor was, however, in such cases allowed to fill up the membership of the council to the number of seven, and such appointees were to act until they were either confirmed or others named in their stead. The small number of three was fixed as a quorum of the council for business.<sup>1</sup>

Cornbury was to call general assemblies with the advice and consent of the council. And by the advice and consent of the same body he was to establish all the courts of judicature and to appoint their powers and fees.<sup>2</sup> With the same sanction he might erect forts, and furnish them with arms and supplies necessary for the defense of the province.<sup>3</sup> Public money was to be paid out only upon warrants, signed by the governor, with the advice and consent of the council. Cornbury could appoint fairs, marts and markets; also ports, harbors, etc., by and with the consent of the council.<sup>4</sup> In case of the death or absence of both governor and lieutenant-governor, the council was to take upon itself the administration of the province, under the presidency of the councilor who was named first, and who was residing in the province.<sup>5</sup>

This was all that was actually said in the commission as to the work of the council, though it was, of course, understood that its general position was to be that of the council in the other royal provinces. A study of the governor's instructions, however, gives a more detailed knowledge of its character and functions. The number of the council was fixed at twelve, who were named in the instructions.<sup>6</sup> Of these, six were from West Jersey, and six from the eastern division; and though it was not specifically stated, the custom was afterward followed of having the mem-

bership divided in this way.<sup>1</sup> This territorial division of the council is doubtless the leading peculiarity of the council of the Jerseys, as compared with those of other royal provinces. The number was, however, increased by the addition of Robert Quarry, the surveyor-general of customs for all the colonies, and later by that of the lieutenant-governor.<sup>2</sup>

Cornbury was ordered to impart to the council so many of the instructions wherein their advice and consent was requisite, as well as such others as he found of advantage. The council was to have freedom of debate and vote upon all matters taken up by it; and although three members constituted a quorum, the governor was not to act with less than five unless in case of necessity.<sup>3</sup> That the Crown might know the names of persons properly qualified for the council, Cornbury was to send the names of six such persons of each division to the commissioners of trade, and as this list became diminished he was to send more names. In case he himself put persons temporarily into the council, he was to send their names and qualifications immediately. All councilors were to be of good life and well affected to the government. Cornbury was, however, forbidden to increase or diminish the number of his council. He was not to suspend any without good cause, and in case of suspension he was to enter the reasons, with the charges and proofs, together with the answers of the accused, upon the council books, unless there were extraordinary reasons for not doing so. All these things, together with the reasons for not entering if this were not done, were to be transmitted at once to the Crown and to the commissioners of trade.<sup>4</sup> Cornbury was to tell the council that if they were

the governor, or for two years without leave of the queen, their places were to become void.<sup>1</sup>

Many of the most important duties of the governor were to be executed "by and with the consent of the council." Such were the signing of warrants for the payment of public moneys<sup>2</sup> and the granting of commissions to provincial officers.<sup>3</sup> The sessions of the assembly were to be held alternately at Burlington and Amboy, unless the governor, by the advice of his council, should appoint otherwise because of special necessity. Salaries and fees were to be regulated by the governor with the council.<sup>5</sup> It was especially stated that no martial law was to be proclaimed without the consent of the council.<sup>6</sup> War was never to be declared without the special command of the Crown, except against the Indians in special emergency, and then with the council's approval.<sup>7</sup> With the council, Cornbury was to provide for the raising of stocks and the building of work-houses for the employment of the poor.<sup>8</sup>

Of great importance were the judicial duties of the council. Appeals could be made from the regular courts of the province to the governor and council in cases of error. Appeal could only be taken, however, in cases exceeding one hundred pounds, and security must be given by the appellant to satisfy judgment in case the decision were affirmed. It was also provided that members of the council who were judges in the courts whence the appeals were taken were not to sit, though they might be present "to state their reasons, etc." In cases exceeding two hundred pounds there could be appeal from the governor and council to the Crown and privy council in England.<sup>9</sup>

The council had also certain reserve powers. In case any matter arose not provided for by the instructions, the governor, with the council, was to take such action as they might deem necessary. But their decision was to be tentative merely, and prompt information of the matter was to be sent to the Crown. In case of the governor's death, the council was to assume the administration, but was to forbear all acts not immediately necessary until a new governor was sent.<sup>1</sup>

A journal of all the council's acts was to be kept, and from time to time copies were to be sent to the home authorities.<sup>2</sup>

Such was the general legal position of the governor's council as marked out in the first commission and set of instructions. As its position was based upon the long experience gained in other royal provinces, it is not surprising that its general legal powers remained substantially unchanged during the entire union period. There did occur, however, a few changes in its sphere of action which may be noted.

We have already referred to the changes in the office of president of the council. But the many difficulties of Cornbury's administration led the home government to take some further steps relative to the council, as well as to the other departments of the government. In New Jersey, as in other colonies, the governor complained that it was difficult to obtain a quorum of the council, owing to the unwillingness of the members to undergo the trouble and expense of travel, as well as to other reasons. Accordingly, we find in 1707 the draft of a circular letter prepared by the lords of trade to the several governors in America, ordering them to suspend such councilors as willfully absented themselves, after due notice of meetings, if they persisted after admonition. Members were to be notified of this order and

<sup>1</sup> *New Jersey Archives*, vol. ii, p. 534.

<sup>2</sup> *Ibid.*, vol. ii, p. 516.

it was to be entered on the council books.<sup>1</sup> There is no evidence that this letter was ever sent to Cornbury. The new rule was, however, made a part of the instructions of Lovelace.<sup>2</sup> Another point raised in Cornbury's time was as to the action of the council regarding appointments to office. Cornbury's appointments gave rise to great complaint, and the West Jersey Society, in a memorial to the lords of trade, declared that he had named persons to office without and even against the advice of the council.<sup>3</sup> The lords, however, while not justifying Cornbury's general conduct, ruled that the governor was not bound to have the advice of his council in naming sheriffs, if he saw cause to act independently.<sup>4</sup> Though their ruling lessened the power of the council, it was undoubtedly justified by the text of the instructions.

The instructions of Lovelace made no important alterations in the work of the council. An additional article, however, emphasized the necessity of appointing men of high character to it, as well as to other important offices.<sup>5</sup> Hunter's instructions repeated Lovelace's with only verbal changes. The added articles did not refer to the structure and powers of the colonial government.<sup>6</sup> Likewise, in the orders given Burnet, Montgomerie and Cosby, the legal position of the governor's council was allowed to remain unchanged. This comparative permanence of the legal place of the council is very similar to that of the governorship, and, indeed, of all the governmental institutions of the colony. Like them, however, though perhaps in a somewhat less degree, the actual working position of the council

## CHAPTER XVII

### THE COUNCIL IN ADMINISTRATION

ALTHOUGH we can safely form certain conclusions as to the part played by the council in the work of administration, there are two obstacles to a detailed understanding of its exact place. One of these is the fact that the council records for nearly all of the administration of Cornbury have disappeared,<sup>1</sup> a thing in itself very suspicious when we recall the general reputation of his lordship and his advisers. A second greater obstacle is the meagre character of the minutes for the rest of the union period. These state clearly enough the action which the council took, but give no account of the debates and discussions, if such there were, which led to the decisions. The student can therefore upon many matters merely draw inferences from circumstances which are not conclusive. In this respect, however, the minutes of the governor and council of New Jersey resemble most records of the colonial period.

With the exception of short periods under Lovelace and Hunter, the governor and council, as has been shown, were always in close political accord. Whether the governor controlled the council or the council the governor, must, of course, have depended to some extent upon the strength of character and intellect of the two parties. The student can hardly help believing that the corrupt and ignorant

politicians which surrounded him, and which contained men of the ability of Coxe, Sonmans, Pinhorne and Basse.<sup>1</sup> But this relation was exceptional. As the members of the council owed their appointments to the governor and must look to him for further favors, their attitude toward him was usually one of extreme deference. Through congratulatory addresses and otherwise the council sought to win the approval of new governors.<sup>2</sup> Lovelace's council, though out of sympathy with him, dared offer no open opposition to his course.<sup>3</sup> Hunter did, indeed, find it impossible to control the ring intrenched in the council under Ingoldsby, but by removing the ringleaders he dominated it completely. So, too, did Burnet and even Cosby. Upon many matters the council was scarcely more than a means of giving formal sanction to the governor's acts, and thus enabling him to escape the entire load of responsibility to the home government. Undoubtedly the council gave the governors advice as to methods and means of action, but, as an independent force in directing the policy of the administration, it played an important part only during the intervals between the departure of one governor and the arrival of another, when the president of the council was very careful to rely upon its direction and support.

Yet, even if its action was hardly more than formal, the council was a necessary part of the administrative machinery of the province. The governor was forbidden by his instructions to sign warrants for the payment of public money without its approval.<sup>4</sup> Moreover, it was certainly expected by the home government that he would take no

very important step without consulting his council. These limitations upon his power compelled the governor to summon his council at least once a year, for otherwise the payment of salaries would be blocked.

No exact general statement can be made as to how often the council regularly met. During the sessions of the assembly it, of course, held long meetings corresponding to those of the lower house. These sessions at Burlington and Amboy were naturally devoted chiefly to legislation. As the council, however, always acted much more summarily than the assembly, it was able to devote some time to its administrative and judicial duties. In addition to these long sessions, special meetings of the council were convoked by the governor as occasion required. These, however, were not frequent, usually occurring not more than two or three times a year. Cornbury was accused of not visiting New Jersey at all for nine months.<sup>1</sup> Such special meetings were generally held at points convenient for the governor from New York, such as Amboy, Bergen, and even Horsimus (now Jersey City).<sup>2</sup>

The administration of a new governor regularly began by a meeting of the council, at which the governor's commission was read and then published. The members of the council, except the Friends, next took the oaths required. The Quakers for their part signed the corresponding declarations.<sup>3</sup> The commissions of patent officers, of customs officers, and of proprietary agents, were regularly read in the council, and the oaths were sometimes administered



thus announced.<sup>1</sup> Other proclamations were in aid of the agents of the proprietors, informing all that they were legally commissioned, and ordering that assistance should be given them.<sup>2</sup> Upon a governor's accession, a proclamation usually continued the powers of the existing executive and administrative officers until successors were legally appointed.

The further administrative work of the council was, of course, very miscellaneous, but the greater part of it can be arranged under a few heads.

The council always witnessed the signing of warrants for the payment of moneys. This hardly appears to have been more than a form, though special meetings were in a few cases called because of its necessity.<sup>3</sup> If the original intentions of the home government had been carried out, the council would undoubtedly have exercised power in supervising the work of the receiver-general and auditing his accounts, under the direction of the governor; but from the beginning the assembly insisted upon its right to control, not only the raising, but also the expenditure of public funds, and after the accession of Hunter its claims were established.<sup>4</sup> The council, however, was always requested by the assembly to name a committee to meet with that of the house in auditing the accounts of the "treasurer," and this was regularly done. The council, therefore, had a voice in deciding what action should be taken regarding the financial officers and their work. Yet the later governors were inclined to follow whatever wishes the lower house ex-

<sup>1</sup> *New Jersey Archives*, vol. xiii, p. 556; vol. xiv, p. 335.

pressed, and the council nearly always dutifully agreed with his excellency.<sup>1</sup>

The power possessed by the governor and council to establish courts, to fix their times of session, and to institute suitable fees, was undoubtedly great. But the council displayed little independence in this matter. The first great ordinance for the establishment of courts is recognized to have been mainly the work of Mompesson, Cornbury's chief justice, doubtless elaborated with the assistance of Judge Pinhorne. Cornbury and council merely approved of it, and issued it in their name. The later ordinances were based upon that of Mompesson.<sup>2</sup> They were all, however, read and considered in the council before they were issued by the governor, and alterations in detail were made in deference to the wishes of the province and the experience of the judges, many of whom were members of the council.<sup>3</sup> The ordinances for fees seem also to have received careful attention.<sup>4</sup> Toward the end of the period, however, they were in two cases prepared in deference to the wishes of the assembly,<sup>5</sup> which was desirous of passing laws regulating fees,<sup>6</sup> and which actually did secure the enactment of statutes to make the ordinances "more effectual."<sup>7</sup>

One of the chief duties of the council was the exer-

<sup>1</sup> Under Burnet, however, the governor and council checked the effort of the assembly to proceed against the estate of Treasurer Gordon by legislation, and insisted upon judicial procedure which finally justified Gordon; *New Jersey Archives*, vol. xiv, p. 303.

<sup>2</sup> Field, *Provincial Courts of New Jersey*, p. 42 and appendix.

<sup>3</sup> *New Jersey Archives*, vol. xiii, pp. 435, 540; vol. xiv, pp. 244, 293, 307, 388, 504.

<sup>4</sup> *Ibid.*, vol. xiii, p. 538; vol. xiv, pp. 45, 113.

<sup>5</sup> *Ibid.*, vol. xiii, p. 535; vol. xiv, p. 43.

<sup>6</sup> *Ibid.*, vol. xiv, p. 43.

cising, under the governor, of a general oversight of the execution of the laws and the carrying-on of the administration by the subordinate officers. Complaints and petitions regarding their conduct were frequently presented to the governor and council, and these usually gave rise to investigations. Though the governor did not always consult his council regarding the removal of colonial officials or the appointment of new ones, he usually did so. The most important instance of removal during the union period was the case of Alexander Griffith, in 1714. Griffith was the attorney-general, a member of Cornbury's clique, who had deliberately neglected to prosecute Peter Sonmans and Daniel Leeds, though directly ordered to do so. After a lengthy investigation, which was virtually a trial in which Griffith himself had opportunity to be heard, the council found that he had been guilty of misconduct, and advised his suspension from office, a step which Hunter promptly took.<sup>1</sup>

Several other cases concerned proprietary officers. In February, 1713-14, Mr. Byerly, a member of the council, entered complaint against Daniel Leeds, the surveyor-general of West Jersey, and other proprietary officers.<sup>2</sup> Upon examination before the council, it appeared that Leeds had falsified the records of surveys.<sup>3</sup> As a result, the council disqualified him from acting further as a surveyor in the western division,<sup>4</sup> and ordered his prosecution, but he was by Griffith allowed to escape. Upon the removal of the latter, the council again ordered the prosecution of Leeds.<sup>5</sup> Later, in April, 1726, under Burnet, complaint was made against Peter Sonmans for endeavoring to act as collector

decided to prosecute him upon information, and he was bound over to stand trial.<sup>1</sup> A proclamation was also issued against him.<sup>2</sup>

Sheriffs, constables, and tax collectors were also brought to task and removed or punished. Thus, under Burnet, the sheriff of Monmouth was removed by order of the council, for negligence in failing to arrest a seditious person,<sup>3</sup> and under the first presidency of Morris a sheriff of Gloucester was dismissed and the tax collectors threatened with prosecution if they continued to fail in doing their duty.<sup>4</sup>

The governor also preferred to act with the council in ordering prosecutions by the attorney-general against provincial officers or ex-officers. Thus in January, 1714-15, under Hunter, it was ordered that Daniel Coxe should be prosecuted for "several contempts and misdemeanors."<sup>5</sup> Under Burnet the prosecution of the estate of Gordon was instituted.<sup>6</sup> Yet, after all, when we consider the great laxity in enforcing the laws, and especially in collecting the taxes, the conclusion is unavoidable that the oversight of the council was not very rigid, except in cases of political importance. The general inefficiency of its control is to be explained partly by the infrequency of its meetings and partly by the difficulty of securing convictions in the provincial courts.<sup>7</sup> The assembly, by its addresses and other representations to the governor, was far more successful in getting rid of officers to whom it objected than was the council. The dismissals of Fauconier, Gordon and Jamison are cases in point.<sup>8</sup>

<sup>1</sup> *Ibid.*, vol. xiv, pp. 316-317.

<sup>2</sup> *Ibid.* vol. xiv, p. 302.

<sup>3</sup> *Ibid.*, vol. xiv, p. 326.

<sup>4</sup> *Ibid.* vol. xiv, pp. 118, 128.

In close connection with this general supervisory function, the governor and council exercised a sort of general police power over the province. Acting usually on complaint, the council had brought before it persons accused of seditious words or language, or of attempting to bring the government into contempt. There are several notable examples of the use of this power. Two of these are connected with the political contest between Hunter and Col. Coxe. Coxe, in his efforts, had been warmly supported by the Rev. George Talbot, the able rector of St. Mary's Church at Burlington. In 1715, just after the overthrow of Coxe and his party, the council declared that, since Talbot was suspected of sedition, the sheriff of Burlington should administer the oaths of allegiance to him, and, if he refused to take them, he should be suspended from the ministry and imprisoned until he entered into a recognizance to keep the peace.<sup>1</sup> These measures were effective in silencing Talbot. It proved necessary to deal with other members of Coxe's party also. After the expulsion of Clews, Hewlings, Bull, and the other colleagues of Coxe, from the assembly, they proceeded to hold meetings and "continue their conspiracy." It was therefore ordered that they be arrested.<sup>2</sup> Bull and Hall were eventually brought before the council and bound over for trial.<sup>3</sup>

Another case resulted from the opposition offered by the Jacobite proprietor, George Willocks, to Governor Burnet. In March, 1721, Willocks was brought before the council charged with disaffection to the king and his government in the colony. After examination, he was remanded to

<sup>1</sup> *New Jersey Archives*, vol. xiv, pp. 16-19.

<sup>2</sup> *Ibid.*, vol. xiv, p. 30.

<sup>3</sup> *Ibid.*, vol. xiv, pp. 42-43. It does not appear that they were convicted. Hall died soon after.

custody until he gave security for good behavior.<sup>1</sup> Several other persons of less note were arrested by the council for somewhat similar offenses.<sup>2</sup>

The council was also supposed to advise the governor upon important matters, and all the governors frequently called for the opinions of the members. But the subjects upon which this advice was asked differed widely. On one or two occasions the chief executive consulted his council with the *bona fide* intention of learning the opinions of the leading men of the province. So Burnet consulted his councilors as to the best means of providing for the military defense of the Jerseys.<sup>3</sup> In this case a committee of the council considered at length and presented a written report, the purport of which was certainly not what the governor desired.<sup>4</sup> Usually, however, the asking of the advice of the council was a mere form intended to justify the governor in some step he was about to take, and the council dutifully replied as his excellency desired. So Hunter consulted his council about the advisability of dissolving an assembly in which Coxe had a majority,<sup>5</sup> and soon after about calling an assembly at Amboy, instead of at Burlington, as a means of circumventing Coxe.<sup>6</sup> So, too, Montgomerie consulted his council as to the conduct of the assembly in addressing the Crown for a separate government, and was informed that it showed disloyalty to do so before finding out the wishes of the Crown in the matter.<sup>7</sup> So far as appears from the journal, the governors never formally asked advice on matters of general policy.

Such were the main administrative functions of the coun-

cil. Other miscellaneous duties it had, like the granting of patents for several purposes. Ferries, for example, were thus established. Other patents were for churches, one of the most interesting of which was for the establishing of St. Mary's at Burlington, granted in 1710.<sup>1</sup>

It must be very evident from what has been stated that, in carrying on its work, the governor and council acted together as a unit. It is highly probable, indeed, that much of what went on in the council had been arranged beforehand by private conferences and discussions between the governor and his friends both in and out of the council. This was especially the case under Hunter, who was accused, during the early part of his rule, of having a sort of "cabinet" apart from the council, consisting of Morris, George Clarke, Farmar, Gordon, Gardiner, and the Jacobite, Willocks.<sup>2</sup>

Before leaving the administrative work of the council, there is another aspect of the matter which must be considered. In New Jersey, as in nearly all the colonies, the members of the council held at the same time numerous other more or less lucrative and important posts under the government. To give only a few cases, Lewis Morris was not only president of the council, but agent of the West Jersey Society, president of the council of proprietors of East Jersey, and the holder of numerous posts in New York, including for a time that of chief justice. James Alexander, while serving in the council, was surveyor-general of both the Jerseys and their attorney-general, besides holding offices in New York. Col. Hamilton was deputy postmaster for North America, and for a time second judge and president of the council of proprietors of East Jersey. Mompesson was chief justice of both New York and New

<sup>1</sup> *New Jersey Archives*, vol. xiii, p. 396.

<sup>2</sup> *Ibid.*, vol. iv, p. 119.

Jersey. Pinhorne was second judge of the Jerseys. Coxe was a colonel; Leeds, surveyor-general of West Jersey; Sonmans, collector of quit-rents in East Jersey; Byerly was collector of customs at New York; Thomas Gardiner was surveyor-general of West Jersey; John Reading, clerk of the council of proprietors of West Jersey; and James Smith, secretary of the province and proprietary register. Nearly all the members of the council under Cornbury and Ingoldsby were judges in their respective counties, and many of them were military officers.<sup>1</sup> A large number of councilors were proprietors, though all the factions in the proprietorship were represented at various times.

Thus, in supervising the administration the councilors were to some extent supervising themselves. The concentration of offices in a few hands appears in its worst form under Cornbury. Under worthier executives its harmful results are not so apparent. In any case it was undemocratic and undesirable. The aspect of the council as a ring of officeholders is, of course, a purely non-legal one. But the actual importance of the provincial council cannot be understood without taking it into account.

<sup>1</sup> They were put into the commission of the peace for all the counties and Sandford, Bowne, Coxe, Leeds and Revell were provincial judges; *liber AAA of Commissions*.



## CHAPTER XVIII

### THE COUNCIL IN LEGISLATION

As the upper house of the colonial legislature, the position and work of the council of the Jerseys corresponded closely with those of the councils of the other royal provinces. Its consent was absolutely required for the enactment of provincial statutes, and so far as the requirements of the governor's commission and instructions went, it had absolute equality with the assembly in the work of legislation.<sup>1</sup> Moreover, as "the upper house" it enjoyed certain honorary distinctions during the sessions of the legislature. Its presiding officer was his excellency in person, and its secretary was regularly the secretary of the province, a patent officer of the Crown.<sup>2</sup> At the opening of the session the members of the assembly attended the council chamber to hear the governor's speech, and if the lower house at any other time wished to present an address or remonstrance, it attended in like manner. The governor also on occasion summoned the representatives of the people before himself and council to address them further. It was also the custom for the assembly to present bills for the support of the government by waiting upon him in person.<sup>3</sup>

Since the council was a small body, its methods of procedure in legislation were rather simple, despite its affectation of dignity. Bills were sometimes introduced by in-

dividual members on permission given, but frequently the council simply voted that a bill of a certain nature be prepared, and named a person or a committee to draw it up. Bills were regularly given three readings, and then sent down to the lower house. On important questions, notably on many of the bills sent up from the assembly, committees to investigate and report were employed, but these were never permanent or standing committees. The council often disposed of matters rather summarily, owing partly to its small size and partly to the unanimity which usually existed among its members. Evidences of controversy and party divisions among the members are rare.<sup>1</sup> As in its administrative so in its legislative work, the council was nearly always thoroughly under the control of the governor. It regularly defeated or smothered bills of which his excellency did not approve, and so enabled him to escape directly refusing to consent to measures which had the approval of the entire legislature—a “negative voice” which he was admitted to possess, but of which he was desirous to avoid making use. Only during the earlier years of Hunter was the council disposed to offer opposition to the chief executive.<sup>2</sup> In the dealings between council and assembly messages were sent back and forth by the secretary or clerk or by members, and where there were real differences of opinion conferences were held which sometimes lasted several days.<sup>3</sup>

But in spite of the fact that it was the “upper house,”

<sup>1</sup> They appear under Cornbury and Hunter. But members out of sympathy with the policy of the council usually did not attend the meetings

the council in practice had by no means the same influence and authority in the actual work of legislation as the assembly. Its early efforts to assume superiority on certain points were soon defeated. During the bitter struggles of the administrations of Cornbury, Lovelace and Ingoldsby, the council took an active part. But these conflicts concerned chiefly matters of general policy, like the treatment of the proprietors and the support of the government. Even in so far as constitutional questions were involved, it was in the main the prerogative of the governor and the privileges of the assembly that were under discussion and the council acted merely as the tool of Cornbury and Ingoldsby. Still, in one or two instances the relations of the council and the assembly were a subject of controversy. The corrupt ring which dominated the council naturally took the position that the deliberations of their body were secret, even when it was acting as a part of the legislature. It assumed this position notably when, after the defeat in the house of the measures for the support of the Nicholson-Vetch expedition against Canada, it had named a committee to search the records of the representatives with a view to fixing the guilt. The house retaliated by naming a committee to examine the council records. The council then declared that as a special concession only would it allow the representative to see such minutes as referred to their house, but no others,<sup>1</sup> and even this concession was nullified by Ingoldsby's action in adjourning the assembly.<sup>2</sup>

Later, when the assembly undertook an examination into the conduct of the expedition and directed Secretary Basse to submit the documents relating to it, the council withheld them on the ground that it was itself considering them.<sup>3</sup>

<sup>1</sup> *New Jersey Archives*, vol. xiii, p. 361.

<sup>2</sup> *Ibid.*, vol. xiii, p. 364.

<sup>3</sup> *Assembly Journal*, Jan. 30, 1709-10.

But these pretensions on the part of the council soon had to be surrendered, because Hunter was absolutely unwilling to shield the ring of politicians installed by Cornbury. When the question of access by the house to the council journal was again raised,<sup>1</sup> Hunter, on address by the assembly, at once submitted copies of the minutes.<sup>2</sup> He also directed the secretary that in the future the minutes of the council relating to the passing of bills be kept in a separate book. To this legislative journal the house could have access at any time; for a perusal of earlier minutes, however, the representatives were to apply to the governor, as they contained both legislative and administrative matters, the latter of which were admittedly secret.<sup>3</sup> Soon after, in spite of certain feeble efforts to delay, the council was compelled to submit the documents relative to the Canada expedition to the inspection of the house.<sup>4</sup> Hunter also laid before the representatives the entry of the reasons of Lawrence and Mott,<sup>5</sup> two members of the assembly, for voting against the bill for supporting the expedition. After these persons had been refused by the house the privilege of entering their statements upon the assembly journal, they had been allowed by the council to make the entry upon their minutes, and Secretary Basse had refused to allow the representatives to see the statement. By Hunter's firm action the principle was thus established that the council should not withhold knowledge as to its legislative proceedings or block the house in legitimate investigations.

Upon one matter, however, the council won a partial victory. Lovelace, upon application by the assembly, had

governor and council to the Crown in Cornbury's time, a document which reflected upon the representatives.<sup>1</sup> But Hunter did not compel his council to reveal the somewhat similar address sent under Ingoldsby.<sup>2</sup> This check upon the popular body was, however, of little account, for, under the wise rule of Hunter, Cornbury's corrupt clique was superseded in the council by men who had no reason to desire secrecy in their actions.

But, though the claim to secrecy was the matter which most directly concerned the position of the council in the legislature, it was, of course, not the only question upon which it had met defeat. The long conflict between the governor and council and the house under Cornbury, Lovelace and Ingoldsby, is described in detail elsewhere. It would be useless to repeat it here. Suffice it to say that under the first governor the conflict resulted in the entire defeat of practically all legislation. But while Lovelace and Ingoldsby were in power numerous important measures were enacted which the council endeavored in vain to amend radically.<sup>3</sup> During this period it became very apparent that when the assembly was in earnest in its demands the "upper house" must yield. The assembly proved both ready and willing to defeat the ends of government entirely rather than concede important points. The council, composed as it was of royal appointees, could not incur a similar responsibility, and showed the fact. Thus the ultimate superiority of the lower house was established, though, of course, it was never formally recognized.

During the long time between the victory of Hunter over

<sup>1</sup> *Assembly Journal*, March 9, 1708.

<sup>2</sup> *Ibid.*, Jan. 3, 1710-11.

<sup>3</sup> Notably in the conflict as to the use of the title "General Assembly" in acts. The council was squarely defeated in its efforts to compel the assembly to use this title for the entire legislature and not for the house of representatives alone.

Coxe, Sonmans and Basse, and the end of the union period, in which, speaking generally, the council and assembly were in agreement, the theory of the general equality of the two houses prevailed. Yet the most casual survey of the legislative history of the time shows that in practice the assembly was a far more important factor than the council. It was in the house that the first resolution was regularly adopted as to what action should be taken upon the recommendations of the governor's speech, a step which decided usually what the chief work of the session should be. Nearly all the bills originated in the assembly, and that body undoubtedly supplied the initiative force in carrying them through. The council, partly through the force of circumstances, partly through the policy of Hunter, dropped into the position of an advisory and moderative body rather than an initiating one.

But it must not be supposed that therefore the council became unimportant. The character and ability of the men who composed it, and its recognized position as the legislative mouth-piece of the governor, always prevented such a result. It continued to amend most of the measures sent up to it, and in a great majority of cases these amendments were accepted in whole or in part. The readiness with which the later assemblies accepted council amendments shows the harmony of feeling between the houses, and it would not be too fanciful to infer from it also some recognition of the superior experience and knowledge of the council.<sup>1</sup> At the same time, in the few instances when matters of principle were involved, as in the first session of Burnet's rule, the assembly always stood firm. The council always retained the right to introduce bills, and occa-

played much enthusiasm for such measures. In the field of military affairs especially the council evinced great interest, and several measures relating to this department originated there.<sup>1</sup>

There was, however, one subject of legislative action regarding which the assembly from the beginning to the end of the period claimed and maintained an important superiority over the council. The assembly always regarded itself as alone privileged to originate money bills, and general colonial practice was so well established that, however much the governor and council endeavored to influence by persuasion and patronage the making of liberal grants, they only once endeavored to anticipate the action of the representatives by introducing an independent bill.<sup>2</sup> Though nothing was said in the commissions or instructions of the governors on this point, and no formal recognition of this peculiar power of the house was ever made, the abandonment of the right to initiate money legislation to the assembly was in practice nearly complete.

In New York and other colonies there had been bitter conflicts, not only as to the right to originate bills granting money, but also about the power of the council to amend money bills when sent up. New Jersey did not entirely escape the latter quarrel. When Burnet superseded Hunter, he took, as we shall see, a very decided stand on the subject of long-term grants of support to the government, instead of the grants limited to two or three years, which, in spite of their instructions to the contrary, earlier executives had always accepted.<sup>3</sup> Dur-

ing his first meeting with the assembly, the council amended the bill for support sent up by the house, changing the time of the grant from two to twenty-one years.<sup>1</sup> The house, which was already hostile to the new executive, formally resolved that such a step was unconstitutional,<sup>2</sup> and as the council, under Burnet's control, would not give way, the measure was lost. Thus the house enforced its contention, and though in later sessions it was induced to lengthen the grants, it took such action itself. The effort of the council under Montgomerie to originate a money bill met speedy defeat,<sup>3</sup> and the house may be justly regarded as having established the principle for which it contended. The control of the purse strings was, of course, as in all Anglo-Saxon communities, the one great secret of the superiority of the representatives of the people over both the executive and the appointive upper house. The governor and the councilors were perhaps not vitally affected by the refusal of the assembly to pass other measures of which the province stood in need, but, without the grant for support, they could receive no salaries. The councilors were, indeed, "men of substance," but the expenses involved in service on the board must have been not inconsiderable.<sup>4</sup> Closely associated, as they were, with the governor and other royal officers, they showed themselves ready to yield to the demands of the house rather than prevent the appropriations. Under such a condition it is perhaps remarkable that the council was able to retain the power and influence which it actually possessed during the period of the union.

Before concluding this brief statement of the place of the



field of activity of the upper house which, though not actually legislative in character, was nevertheless closely connected with its legislative work. This was the drawing up of addresses, congratulatory, patriotic and otherwise, to the Crown and to the governors. Some of these addresses were hardly more than formal, such as those congratulating Queen Anne and King George upon the victories of the royal arms.<sup>1</sup> They, nevertheless, were assurances to the home government of the loyalty of the province, and moreover gave proof of the zeal of the royal governor whose rule inspired such sentiments. In some cases, however, the addresses of the council had greater importance. Thus, upon the accessions of Lovelace and Hunter, they received communications from the council,<sup>2</sup> which can hardly be regarded as more than bids on the part of the corrupt ring in the council for a continuance of the executive favor and protection which it had enjoyed under Cornbury and Ingoldsby. The address of congratulation to Lovelace, in which he was hailed as "the embodiment of all perfections," was so servile in character as to arouse indignation in the province.

Two of the addresses to the Crown were also notable. One of these was drawn up after the great attack upon Cornbury by the assembly in 1707.<sup>3</sup> In it the council represented in fulsome terms the uprightness of the governor, and bitterly attacked Morris and Jennings as the inciters of disturbance and faction. The other was sent by Ingoldsby's council during the agitation over the Nicholson-Vetch expedition.<sup>4</sup> It put the blame for the defeat of the measures to provide support for the expedition upon the Quak-

ers, and represented the need of excluding them from office. Both addresses are strong evidences of the servility and corruption of the council at the time they were prepared, and as soon as their purport was known they became objects of attack by the assembly. There was, indeed, good reason for the attempts of the council to prevent the representatives from obtaining copies of these documents. It was very fortunate for the Jerseys that the addresses failed to create upon the home authorities the impression which their unprincipled authors intended.

## CHAPTER XIX

### THE GENERAL ASSEMBLY—PERSONNEL

It can scarcely be said of the general assembly as of the council that its importance was largely due to the distinguished character of the men who composed it. The power of the assembly rested upon the fact that it represented the public opinion of the province, and, while its members were necessarily "men of substance," most of them appear to have been only good representatives of localities which sent them, and not persons of extensive political experience or ability. Such being the case, the important share taken by the assembly in the work of carrying on the government is even more creditable to its members and to the province. Nearly every assembly, however, contained some leaders who, to a greater or less degree, directed its policy, and in fact most of the distinguished men of the union period served at some time or other as representatives. It is true, nevertheless, that not many of these persons actually made their reputations as assemblymen. Such men as Morris, Johnstone, Coxe and Basse are to be remembered chiefly for other reasons. But in several cases they added materially to their power and reputation by their work in the house.

The first assembly, chosen in 1703, contained a proprietary majority, shown at once by the choice of Thomas Gordon as speaker. Among the East Jersey members other notable persons were John Reid, John Harrison, Miles Forster and Col. Richard Townley. In the West Jersey delegation were

Thomas Lambert, William Biddle, John Hugg, William Hall, Peter Fretwell, and Thomas Gardiner.<sup>1</sup>

John Reid is to be remembered chiefly for his work as proprietary surveyor. He had acted as deputy to both Keith and John Barclay, and in 1702 had succeeded them as surveyor-general. A Scot by birth, he was a prominent and useful member of the Amboy group of proprietors.<sup>2</sup> Miles Forster was, like Reid, a proprietor, and had originally come into prominence as deputy surveyor to William Ha'igh in 1684. Later he had been collector and receiver of the customs at Amboy, under Governor Dongan, but in 1689 he appears to have been a merchant at New York. He returned, however, to Amboy, played a prominent part in the political affairs of the province during the opening years of royal government,<sup>3</sup> and was eventually named by Lovelace to succeed Peter Fauconnier as "receiver-general and treasurer." John Harrison, on the other hand, was a trader of Elizabethtown, who, unlike most of his townsmen, had purchased a proprietary interest. Later he became prominent as captain of the East Jersey company of "fuzilleres," raised for the unfortunate Canada expedition of 1709. Harrison was also commissary of the expedition. Later he removed to Amboy, where he acted occasionally as surveyor. He died in 1724.<sup>4</sup> William Biddle, Thomas Lambert, John Kay and John Hugg were long prominent among the proprietors of West Jersey,<sup>5</sup> while Fretwell, Gardiner and Col. Townley all became well known later as members of the governor's council.

<sup>1</sup> *Assembly Journal*, Nov. 10, 1702.

The second assembly of 1704 is notable because of the determined effort made by Cornbury and his new allies, the anti-proprietary party, to control it for the injury of the proprietors. In spite of all their influence, however, the proprietary party had a bare majority of the members elected. The vote for a speaker resulted in a tie between Peter Fretwell and John Bowne, whereupon the clerk, Anderson, a henchman of Cornbury, cast the deciding vote for Fretwell.<sup>1</sup> This was no doubt done to disarm suspicion, as Fretwell was the proprietary candidate. Among the prominent members on the anti-proprietary side were John Bowne, Obadiah Bowne, Richard Salter and Richard Hartshorne, all of East Jersey. The assembly contained both Thomas Gordon and John Barclay, yet the real strength of the proprietors lay in the West Jersey delegation, which included John Hugg, John Kay, William Hall, Thomas Gardiner, Thomas Lambert and Joshua Wright. Other notable men in the assembly were Jasper Crane, John Royse and Robert Wheeler.<sup>2</sup>

The Bownes and Richard Salter, of Monmouth, were already prominent as energetic and violent leaders of their faction. They had taken a leading part in the revolution which had overthrown proprietary rule, as well as in the collection of the "Blind Tax," the bribe given Cornbury to dissolve the first assembly. From this time forth they became staunch supporters of the governor, and were placed by him in several positions of trust.<sup>3</sup> The violence of Salter made him especially obnoxious to the proprietary party, who complained, after he had been made a justice of the peace and captain of militia, that he was a person of "notorious character."<sup>4</sup> Richard Hartshorne, a man of

<sup>1</sup> *Assembly Journal*, Nov. 14, 1704.

<sup>2</sup> *Ibid.*, Nov. 13, 1704.

<sup>3</sup> *Liber AAA of Commissions*, pp. 15, 29, 42, 44.

<sup>4</sup> *New Jersey Archives*, vol. iii, pp. 93, 156.

apparently much higher type, had come to Monmouth from London in 1699, and acquired a large landed interest in the vicinity of the Navesinks. He was a Quaker by profession, and one of the commissioners named in 1676 to lay out West Jersey.<sup>1</sup> Though of considerable influence, he took little part in public affairs, but his sympathies seem to have been throughout with the settlers of Middletown against the proprietors. He had been excluded from the first assembly by the proprietary majority on the ground that he was not properly qualified.<sup>2</sup> The most prominent of the West Jersey representatives was perhaps John Kay, later known as an active member of the council of proprietors, and for a time its vice-president.<sup>3</sup> But especial distinction was won during the proceedings by Lambert, Gardiner and Wright, the three Quaker members illegally excluded from the assembly by Cornbury, in order to give his supporters a temporary majority. Robert Wheeler, merchant, of Burlington, a convert from Quakerism to the Anglican faith, was best known for his prominent connection with St. Mary's Church.<sup>4</sup> John Royce was a merchant of New York, who had purchased lands on the Raritan,<sup>5</sup> but who was not in sympathy with the proprietorship. Jasper Crane, of Newark, was the son of that Jasper Crane who had been one of the original settlers of New Haven, and afterward the leader of the Branford people in their removal to the Jerseys.

The third assembly, justly famous because of its gallant stand against Cornbury's tyranny, was naturally an unusu-

<sup>1</sup> *New Jersey Archives*, vol. ii, p. 329 (note).

<sup>2</sup> *Assembly Journal*, Nov. 17, 1703.

ally strong one, though almost entirely in the hands of the proprietary party. Its speaker was the Friend, Samuel Jennings, who added to his already great services to the colony by his bravery and coolness in the presence of the governor. But the real leader in the house was, of course, Lewis Morris, who chose this new field for battling against the common enemy of proprietors and people. Among the East Jersey members were Harrison, Thomas Farmar, Elisha Parker, Jasper Crane and John Bowne. In the West Jersey representation were John Wills, Thomas Gardiner, John Kay and William Hall.<sup>1</sup> Of these Parker, Wills, Gardiner and Hall were later of the council, while Farmar is hereafter to be noticed as second judge of the supreme court. After the retirement of Jennings, through illness, Gordon succeeded him as speaker.

Lovelace's first assembly, the fourth under royal rule, was, of course, weakened by the absence of Morris and the death of Jennings. Like the third, the proprietary majority was large. Gordon was again chosen speaker. From East Jersey were, in addition, Farmar, Parker, Harrison and John Royce. The West Jersey delegation was perhaps weaker than usual, but included Gardiner and Kay.<sup>2</sup> Monmouth County sent two new members, Elisha Lawrence and Gershom Mott, who represented the violent anti-proprietary feeling in that district. They soon made themselves almost as obnoxious to the proprietary element as the Bownes and Salter.<sup>3</sup> Essex sent John Treat, the son of the leader in emigration from Milford,<sup>4</sup> while Middlesex was represented in part by the Quaker, John Kinsey, later speaker of an

assembly. He was the son of one of the first commissioners of West Jersey, and had been himself one of the earliest settlers in that division.<sup>1</sup>

The fifth assembly, meeting under Richard Ingoldsby, in 1709, was rather notable in that the prevailing spirit was anti-proprietary, although not violently so. Its speaker was the West Jersey proprietor, John Kay.<sup>2</sup> Among the members of former assemblies returned were John Harrison, Thomas Gordon, John Treat, Elisha Lawrence, Gershom Mott, Peter Fretwell, Thomas Lambert and Robert Wheeler. Notable new members were Dr. Johnstone, the powerful Perth Amboy proprietor, and Major Jacob Spicer, of Cape May. Spicer was of Puritan stock, but had removed to Cape May from Long Island.<sup>3</sup> He had commanded the West Jersey contingent in the Nicholson-Vetch expedition,<sup>4</sup> and from that time on played a prominent part in the politics of the colony. Spicer was a supporter of Col. Coxe, and an opponent of the proprietors.

The sixth assembly, the first to meet Hunter, was, however, once more strong in the proprietary interest.<sup>5</sup> Kay, of Gloucester, was again speaker. Like him, most of the other prominent members had served in former assemblies. Burlington sent, with Robert Wheeler, the Huguenot, Isaac Decowe, a proprietor, member for a time of the council of proprietors, and later treasurer of West Jersey. Burlington County sent Thomas Lambert and Joshua Humphries, both well-known proprietors. The Irishman, Isaac Sharp, was now one of the members from Salem County. Later

<sup>1</sup> Smith, *New Jersey*, pp. 92, 103.

<sup>2</sup> *Assembly Journal*, Dec. 1, 1709.

<sup>3</sup> Stevens, *History of Cape May County* (Cape May City, 1897), p. 44.



he acquired considerable prominence in politics, served as a member of the council of West Jersey proprietors, and became colonel of militia.<sup>1</sup> As in the last assembly, Cape May was represented by Fretwell and Spicer. The town of Perth Amboy sent Dr. Johnstone and the ex-Quaker, John Reid; Middlesex was represented in part by Farmar; and Essex by John Treat. Monmouth returned Gershom Mott, but sent with him William Lawrence, a somewhat less resolute opponent of the proprietors.<sup>2</sup> From Bergen came William Sandford, the former member of Cornbury's council. Col. Sandford was, however, expelled by the proprietary majority during the session.

Hunter's second assembly, the seventh, was notable for the final bitter conflict which occurred in it between the supporters of the governor and those of Col. Coxe, the last powerful representative of Cornbury's old ring. The assembly was originally under the control of Coxe, who served himself as representative of Gloucester, and was chosen speaker.<sup>3</sup> The other Gloucester member was Richard Bull, at one time a member of the council of proprietors,<sup>4</sup> but a staunch supporter of Coxe. Others of the faction from West Jersey were Jacob Spicer, Jacob Hewlings, William Clews, and William Hall, the renegade Quaker. William and Elisha Lawrence, of Monmouth, were, as always, willing to take part in any attack upon the proprietors. Hunter's supporters included Farmar, Harrison, Kinsey, and from West Jersey, Isaac Sharp and Samuel Smith, of Burlington. Essex was represented by Col. Josiah Ogden, of

<sup>1</sup> *New Jersey Archives*, vol. v, p. 59; *liber AAA of Commissions*, p. 158; *Minutes of the Council of Proprietors of West Jersey*, bk. 2, p. 1 *et seq.*; bk. 4, p. 64.

Newark, and Joseph Bonnell, of Elizabethtown. The latter was a man long prominent in the affairs of his town, one of the committee of seven to defend the land titles of the associates, and later first mayor of Elizabethtown.<sup>1</sup>

But the expulsion of Coxe and his followers during the second session changed the character of the seventh assembly completely, and made it, like earlier bodies, a proprietary instrument. John Kinsey was chosen speaker in place of Coxe, and the choice warmly approved by Hunter.<sup>2</sup> But of the persons chosen in room of the expelled representatives only two were of great prominence. These were Philip Schuyler, later of the council, and Jeremiah Basse, who, at the close of his long and troubled career, thus reappeared as representative of Cape May. The real leader of the assembly was, however, Governor Hunter himself.

The course of the eighth assembly, which met Governor Burnet in 1721, indicates clearly the fading away of the old party lines. Of this body Dr. Johnstone was speaker,<sup>3</sup> a post which was more and more coming to carry with it the leadership of the house. Among former members returned were Ogden, Bonnell, William Lawrence and Isaac Sharp. Many new members, however, appear, but among them only Robert Lettis Hooper and William Trent are notable. Both of these gentlemen must be noticed later in connection with their work as chief justices.<sup>4</sup>

The ninth assembly, beginning in 1727, and chosen because of the accession of a new king rather than for any political necessity, did not differ in a marked way from

its predecessor in personnel.<sup>1</sup> Dr. Johnstone was again speaker, and the membership included John Kinsey, Jr., Thomas Farmar and Joseph Bonnell. Andrew Johnstone, the doctor's second son, later a man of prominence among the proprietors, represented Amboy with his father.<sup>2</sup> Mahlon Stacey, son of one of the original Yorkshire purchasers in West Jersey, who had won a seat from Burlington County after a contested election with Colonel Coxe during the last session of the eighth assembly, were again returned.<sup>3</sup> An interesting feature was the reappearance of the old adventurer and speculator, Peter Sonmans, as representative of Bergen. That, after his long and discreditable career, he was thus able to reënter public affairs, is not highly creditable to the province. Among other things, the ninth assembly was marked by the advance in the influence of the able politician, John Kinsey, Jr., who now undoubtedly shared with Dr. Johnstone the leading power in the assembly.

The tenth and last assembly of the union period, which met in 1730 under Montgomerie, and later in 1733 under Cosby, showed no sweeping change in membership.<sup>4</sup> Indeed, except when party strife was keen, as under Ingoldsby and Hunter, it is very noticeable that most of the members of the assembly served for considerable periods. The house included Dr. Johnstone, Peter Sonmans, Mahlon Stacey, and John Kinsey, Jr. Aaron Leaming, of Cape May, known to students as one of the compilers of the "Grants and Concessions," was serving his second term. The choice

<sup>1</sup> *Assembly Journal*, Dec. 9, 1727.

<sup>2</sup> Whitehead, *Contributions to the Early History of Perth Amboy*,

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of a speaker, however, resulted in favor of John Kinsey.<sup>1</sup> It is, indeed, unfortunate that more is not known regarding the personality of this interesting leader, as he had undoubtedly become one of the strongest forces in the public life of the province. To so able a critic as James Alexander, Kinsey seemed a man of intelligence and good sense. He nevertheless regarded him, because of his championship of popular issues, as a seeker after popularity.<sup>2</sup> But to a modern student, the manner in which Kinsey had revived and brought forward such issues as that of separation from New York and the demand for a three years' limitation upon the duration of assemblies, bespeaks a democratic and statesmanlike instinct which at once arouses sympathy. The history of the province of New Jersey has lost something because fate has been unkind to the memory of the Middlesex representative.

<sup>1</sup> Smith, *New Jersey*, p. 103.

<sup>2</sup> *New Jersey Archives*, vol. v, p. 262. Kinsey was later chief justice of Pennsylvania.

## CHAPTER XX

### THE GENERAL ASSEMBLY—CONSTITUTION AND LEGAL POWER

IT is not the function of an institutional sketch like this to determine whether, under the British constitution of the eighteenth century, the people of the Jerseys had an inherent right to an assembly or other form of representation, or whether the privilege of choosing one of the houses of the legislature was merely a privilege conferred upon them by the Crown. Under proprietary rule East and West Jersey had always had elective legislative bodies, though they had sometimes gone years without meetings of their assemblies, and it would have been absolutely impossible to govern them satisfactorily without allowing representation. The logic of events has, moreover, given them the "unalienable right" to govern themselves.

Nevertheless, the constitution of the assembly, and to some extent its powers, were based upon the commissions and instructions of the royal governors. Cornbury's commission directed him to rule in accordance with laws made by him with the consent of the council and the assembly. Such laws were not to be repugnant to, but, as near as might be, agreeable with, the laws of England. But within three months they were to be submitted to the Crown for approval or disallowance, and all laws not previously approved might be at any time thereafter disallowed, and were then to be

void. Cornbury himself was given a veto over all laws, and had full power to call, adjourn and dissolve assemblies.<sup>1</sup>

The instructions gave more specific directions. For the better uniting of the province, Cornbury was ordered to call a general assembly with all convenient speed. It was to sit first at Amboy and then at Burlington; thereafter it was to meet at the two towns alternately, unless the governor, by advice of the council, should otherwise appoint. The assembly was to consist of twenty-four members, two chosen by the inhabitants householders of Perth Amboy, two by the inhabitants householders of Burlington, ten by the freeholders of East Jersey, and ten by the freeholders of West Jersey. Members of the assembly must have one thousand acres in their own right within the division for which they were chosen; electors must have one hundred acres in their division. The number of representatives and the manner of choosing was to be altered only by act of assembly, confirmed by the Crown.<sup>2</sup>

In passing acts, the style of "governor, council and assembly" was to be observed and no other. Cornbury was to take care that different subjects were not mixed in the same act, and, as stated in his commission, copies of all acts were, within three months, to be sent to the Crown for approval or disallowance.<sup>3</sup> The assembly was given the important right of examining from time to time all accounts of expenditures disposed of under laws made by them.<sup>4</sup> The assembly was, of course, to have a clerk, who was to furnish a copy of its journal that it might be submitted to the

representatives; Quakers, however, had the right to sign declarations instead of taking the oaths.<sup>1</sup>

The instructions also placed several direct limitations upon the action of the assembly. Thus, no act was to be passed changing the value of coin (whether foreign or English), unless express permission was given. So, also, the settled revenue was not to be lessened except by the previous consent of the home government. These prohibitions, however, in practice had little importance.

It was in accordance with Cornbury's commission and instructions that the first assembly of the royal province of New Jersey was elected and began its work. But it must be remembered that the instructions were not publicly known. Nor could it be correctly maintained that they covered the entire field of power and privilege which the assembly was understood by both the home authorities and the inhabitants of the colony to possess. It was certainly expected that the representatives of the new province should be allowed all the rights and powers commonly held by the assemblies of other royal provinces, rights and powers which, whatsoever their legal basis, were similar in character to those of the English House of Commons.

When, therefore, the first assembly met, it proceeded to choose a speaker, whom, in accordance with the custom, it presented to Cornbury for approval.<sup>2</sup> This practice was followed by all succeeding assemblies, but the approval of the governor was hardly more than a form, since several times during the union period governors approved speakers to whom they were bitterly hostile.<sup>3</sup> Next the house requested the following privileges: that the members and their

<sup>1</sup> *New Jersey Archives*, vol. ii, pp. 521-522.

servants might be free from arrest during the sessions; that they might have free access to the governor's person; that they might have free speech and a favorable construction of all debates; and that in case of difference of opinion between the houses a committee of the council might be named to confer with one from the house to adjust and reconcile. All of these requests were duly confirmed by Cornbury except the last, which he rejected as an innovation. Henceforth they became practically a part of the constitution of the house. When succeeding speakers were chosen, they regularly requested "the usual privileges," and they were always granted.<sup>1</sup> Even the fourth privilege, rejected by Cornbury in 1703, was always given in practice. Because of its formal rejection, however, it could not be said to be one of "the usual privileges."

There was no change in the constitution or legal power of the house until the first meeting of the second assembly in the autumn of 1704.<sup>2</sup> This was the session made notorious by the exclusion of the three West Jersey members through the illegal and tyrannical interference of Cornbury. It will be recalled that this action on the part of the governor was part of a plan arranged between Cornbury and the leaders of the anti-proprietary party, in accordance with which, in return for the support of his excellency against the claims of the proprietors, the anti-proprietary faction undertook "to answer the ends of government." During the period in which the new friends of the governor were able to maintain their ill-gotten majority, an act was passed "for altering the present constitution and regulating the election of

<sup>1</sup> *Assembly Journal*, Nov. 15, 1704, for the example at the opening of the second assembly.



representatives to serve in general assembly.”<sup>1</sup> This was a political measure intended to secure the permanent control of the assembly to the anti-proprietary party, by lowering the qualifications for the suffrage, and thus admitting to the ballot the poorer element in East Jersey, which was mainly anti-proprietary in feeling. But while the motive for its passage was apparently an unworthy one, the act itself was certainly a step in the direction of democracy. It, moreover, corrected certain other defects in the method of choosing representatives which had already led to well-merited complaint.

The new act declared that henceforth representatives should be elected by a majority of the freeholders of each county. It thus did away with the requirement of ownership of one hundred acres for the suffrage. It also abolished the pernicious practice of having the ten members for each division chosen at some one point in the division arbitrarily selected by the high sheriff of the division, a practice which had already enabled the sheriff of East Jersey, Thomas Gordon, to secure the election of proprietary members to the first assembly against the wishes of a majority of the electors of the division.<sup>2</sup> The new act endeavored to apportion representation among the several counties according to population. It gave Bergen one member, Essex three, Middlesex two, Amboy two, Somerset one, and Monmouth three. In West Jersey, Burlington town was assigned two, Burlington County two, Gloucester three, Salem four, and Cape May one. As to qualifications of representatives, it was said merely that they should be inhabitants and freeholders of the division for which they were chosen, and freeholders of the county whence they were elected. The

<sup>1</sup> *Assembly Journal*, Dec. 12, 1704.

<sup>2</sup> *New Jersey Archives*, vol. iii, pp. 14, 276.

house itself was to be the judge of the qualifications of its members.<sup>1</sup>

In h's correspondence with the lords of trade, Cornbury argued that a change in the constitution of the house was necessary, because men well fitted to serve were debarred by not having one thousand acres of land, though they had many times its value in money. He said that, as a result, several members of the first assembly were elected simply because of their ownership of the one thousand acres, though they were so ignorant that they could not read or write or answer a question. His excellency also explained the difficulty of compelling electors to travel two hundred miles in order to vote.<sup>2</sup> The arguments of Cornbury, of course, are not to be taken seriously. A purely political motive was responsible for the passage of the act, and it was entirely too democratic to be acceptable to the home authorities. With the other important laws of the session, it was disallowed by the Crown.<sup>3</sup>

But the inconvenience of the former constitution of the assembly had at least been made clear. An additional instruction was therefore issued to Cornbury in April, 1705, which he was ordered to proclaim in a public manner.<sup>4</sup> Henceforth two representatives were to be chosen by the inhabitants householders of the "City or Town" of Perth Amboy and two by the freeholders of each of the five counties of East Jersey. Two representatives were to be chosen in similar manner by the inhabitants householders of the town of Burlington, and two by those of

West Jersey were also to elect two representatives for each county. The manifest object of this apportionment was, of course, to secure equality between the two divisions. The property qualifications were restored, but it was now ordained that electors should possess one hundred acres of land or fifty pounds sterling in personal property; while representatives must have one thousand acres or five hundred pounds sterling. Nothing was said about a residence qualification. No alterations in the constitution of the assembly were to be made save by act of assembly. Cornbury accepted the new arrangement with the best grace possible, merely telling the lords of trade that, since the proprietors of West Jersey were still tenants in common, it was difficult to say whether any one of them had one thousand acres in his own right or not.<sup>1</sup>

The disallowance of the act of the second assembly enabled the proprietary party to regain control of the assembly, and to retain it for the remainder of Cornbury's rule. No further change in the character or position of the house was made, and when Lovelace succeeded Cornbury, the additional instruction of 1705 was made a part of his regular instructions.<sup>2</sup>

But the fourth assembly, which met under Lovelace in the spring of 1708-9, passed an "act regulating the qualification of representatives to serve in general assembly," which modified the effect of the royal instructions by substituting fifty pounds and five hundred pounds current money as the value of the personal property qualifying persons for the suffrage and the right to serve as representatives for the corresponding amounts sterling which the instructions had ordered. The act also declared that each representative should be a freeholder of the division for which he was

<sup>1</sup> *New Jersey Archives*, vol. iii, p. 119.

<sup>2</sup> *Ibid.*, vol. iii, p. 318.

chosen, and that the assembly should be the judge of the qualifications of its members. With these changes and additions, the statute repeated the requirements of the instructions.<sup>1</sup> It is to be noticed that this law reducing the property qualifications was the work of an assembly controlled by the proprietary party, which naturally represented such aristocratic feeling as existed in the province. Like the other acts of Lovelace's time, it was, however, owing to the neglect, if not something worse, of Basse, never sent home for the action of the Crown.<sup>2</sup> It nevertheless remained in recognized force in the colony, was reprinted in the books of statutes, and, except where slightly modified by later legislation, regulated the choice of representatives until Burnet's administration.

A change of some significance was made by the fifth assembly, under Ingoldsby, a body which was somewhat favorably inclined to the lieutenant-governor. It was enacted in the spring of 1709-10, that henceforth representatives must be actually residents with their families of the Jerseys, and that they should have an estate sufficient to qualify them within the division for which they were chosen.<sup>3</sup> It was asserted by Hunter, who had every reason to judge correctly, that this was a partisan measure aimed to disqualify Dr. Johnstone and Capt. Farmar, the aggressive proprietary leaders who were residing in New York.<sup>4</sup>

There are also two other matters worthy of note during the period of Lovelace and Ingoldsby. The twenty-second article of Lovelace's instructions, repeated in the sets of later governors, ordered him not to assent to the passage of

the measure had first been submitted to the Crown and approved, or unless there were a clause in the bill suspending its operation until the royal assent had been given.<sup>1</sup> While this was a command directed primarily to the governor, it was in effect a limitation imposed by the instructions upon the house. The restriction proved, however, hardly of much importance in practice.

A more important change was brought about by another law of the fifth assembly. An act for ascertaining the place of the sitting of the representatives<sup>2</sup> ordered that henceforth the assembly should meet only at Burlington, instead of at Amboy and Burlington alternately as heretofore.<sup>3</sup> This was apparently another slap at the Amboy clique of East Jersey proprietors in the interest of Ingoldsby and Cox.

When Robert Hunter was commissioned, a peculiar complication arose, because in drawing his instructions the home authorities acted in ignorance of the acts passed under Lovelace, and in disregard of those passed under Ingoldsby. Hunter's instructions were a mere repetition of those of Lovelace, and therefore contained the same statement regarding qualifications for the assembly as Cornbury's additional instruction of 1705. The assembly was also ordered to meet alternately at Burlington and Amboy.<sup>4</sup> The matter of qualifications gave no immediate trouble. In a letter to Hunter sent with the instructions, the lords of trade informed him that they had no objection to the act of Cornbury's time, altering the requirements for representatives and electors, save that it did not fix a definite property quali-

fication, and that they were willing that, if the property qualification was too high, it should be reduced by act of the legislature.<sup>1</sup> But the question as to the place of session was more troublesome. On this point there was now a direct contradiction between the law of the province and the instructions of the Crown.

Hunter's council, controlled at first by the old clique, split as to whether it was expedient to obey the royal commands or the recent act, but Hunter, with his usual prudence, decided to meet his assembly first at Burlington, "there being hardly any house at the place called Amboy."<sup>2</sup> When the sixth assembly came together, Hunter tried to avoid further difficulties by obtaining the repeal of the recent acts regarding the place of sessions and the necessity of actual residence for a seat in the assembly. But though the assembly, again under proprietary control, was agreeable to the substitution of the provisions of the instructions in the form of new acts, the council defeated the measure.<sup>3</sup> In his able letter to the lords of trade of May 7, 1711, Hunter therefore took the position that, since the act requiring sessions at Burlington only was contrary to the instructions, it was of an "extraordinary nature," and consequently of no force till formally approved by the Crown. He therefore declared his intention of calling the next assembly at Amboy,<sup>4</sup> and actually did so.<sup>5</sup> As the second session of the sixth assembly was held to provide means for the second Canada expedition, his opponents deemed it inadvisable to

<sup>1</sup> *New Jersey Archives*, vol. iv, p. 3. The reduction had of course already been made by the act under Lovelace.

<sup>2</sup> *Ibid.*, vol. iv, p. 11.

<sup>3</sup> *Ibid.*, vol. iv, p. 55. It appears to have been "smothered" in com-

protest. Subsequently, however, Hunter was informed by the lords of the official confirmation of the act fixing meetings of the assembly at Burlington.<sup>1</sup>

Hunter met the third session of the sixth assembly at Burlington. But before the seventh assembly met Queen Anne was dead, and Hunter had received a new commission and a new set of instructions as the representative of George I.<sup>2</sup> The new instructions again ordered alternate meetings at Burlington and Amboy,<sup>3</sup> and Hunter, basing himself upon these and the advice of his council, called the session at the latter place.<sup>4</sup> The seventh assembly, however, was under control of Coxe, and at once denied the right of the governor to overrule a law of the province.<sup>5</sup> But the result of the conflict was the expulsion of Coxe and his friends from the house, and the ruin of their party in the province.

The policy of Hunter was of very doubtful legality in spite of his success. Yet he certainly had no desire to act arbitrarily. To put an end to the whole difficulty a new act was passed by the re-formed seventh assembly, repealing the law of Ingoldsby's time which had caused so much trouble,<sup>6</sup> on the ground that it was "contrary to royal instructions and prejudicial to the interests of the eastern division." Henceforth the old practice of having alternate sessions was unquestioned.

The province was quite satisfied to allow things to remain as they were during the rest of Hunter's successful rule. The growth of the province in population and wealth, however, rendered certain changes necessary during the

<sup>1</sup> *New Jersey Archives*, vol. iv, p. 227.

<sup>2</sup> *Ibid.*, vol. iv, p. 215.

<sup>3</sup> *Assembly Journal*, April 6, 1716.

<sup>4</sup> *New Jersey Archives*, vol. xiv, p. 6.

<sup>5</sup> *Assembly Journal*, April 5-3, 1716.

<sup>6</sup> Allinson, *Statutes of New Jersey*.

administration of Burnet. After his difficulties with the third session of the seventh assembly, Burnet wrote to the lords of trade recommending that the apportionment of representatives be changed so as to give the new county of Hunterdon the two representatives then assigned to Salem Town.<sup>1</sup> He explained that the inhabitants of Hunterdon were numerous, but still had to journey to Burlington to vote; while Salem was "a fishing village" of twenty houses and seven or eight votes. His excellency also represented that the two members from Salem had been the ringleaders against him, and yet they were sure of reëlection, while Hunterdon was loyal and would send good men. The only objection to the alteration of the system of representation by the issue of an additional instruction was the existence of the law of Lovelace's time which confirmed the present arrangement. But Burnet raised the point that the act existed only in print, and had never been sent home for confirmation. In any case, however, such act, being opposed in tenor to several things in the instructions, would be void.

The question as to the relative validity of the act and the instructions was referred by the lords of trade to the attorney-general, who reported in September, 1723, in favor of the view of Burnet. If the act had been confirmed it would have held good, but such was not the case. The method of representation was founded upon an instruction, and had several times been altered by instructions under Cornbury. The attorney-general held, therefore, that the Crown possessed the power to alter.<sup>2</sup> Soon afterward an



The new arrangement went into effect apparently without protest, but the ninth assembly, the last of Burnet's time, in which the patriotic and aggressive John Kinsey was a power, enacted the terms of the additional instruction into a provincial statute.<sup>1</sup> It does not appear that the law confirming the change was suggested by the governor, though he approved of it. The statute stated that the change was made because the late King George had been pleased to alter his instructions, and because it was "highly reasonable" that the numerous inhabitants of Hunterdon County should have the right to choose representatives. This was the last change in the system of representation made during the union period.

In 1725, also under Burnet, the first law was enacted for regulating elections, and laying a penalty on all officers and other persons who interfered with the polls.<sup>2</sup> The two previous acts regarding the qualifications of representatives had made sheriffs who made false returns guilty of a crime, but the entire system of conducting elections had never been stated before in detail. The new law ordered that all sheriffs, or other officers to whom writs for the election of members of assembly were addressed, should forthwith give public notice of the day and place of election, by putting up advertisements, at least twenty days before the time of election, at three of the most public places in their county or town. On the day named they should, between the hours of ten and twelve, proceed to the election by reading their writs, and should not declare the choice upon the view nor adjourn the election from that place to any other

<sup>1</sup> Allison, *Statutes of New Jersey*.

<sup>2</sup> *Ibid.*, This act was the result of the disputed election between Col. Cox and the Quaker, Mahlon Stacey, in which Weston the sheriff of Burlington had unduly favored Cox: *New Jersey Archives*, vol. v. p. 105.

place without the consent of the candidates, nor should they by unnecessary adjournment delay the election. But they should, if a poll were required, fairly and indifferently take the poll from day to day and time to time until all the electors there present were polled. The sheriffs were commanded to appoint one clerk and one inspector for each candidate, upon the nomination of the candidates. The clerks were to take oath to act fairly, and were then to take the poll by setting down the names of the electors and the place of their abode and the person they voted for. The sheriff was to give a copy of the poll to any who desired it, upon the payment of a reasonable fee. If any elector was questioned, an oath was to be administered to him, while Quakers might affirm to the same effect. Penalties were set for persons who conveyed lands to others to enable them to vote, subject to agreement to recover them. Such grants were to be held as absolute, and both parties concerned were to forfeit ten pounds to any one who should sue. A sheriff not acting in accordance with the law, or returning a person not elected, was to forfeit three hundred pounds, one-third to the Crown, one-third to the poor of the place, and one-third to the person aggrieved that should sue. All bribery and corruption were prohibited, and any candidate practicing them was to be disabled from sitting, even if elected. Further, any one who slandered the opposing candidate or influenced votes by indirect means was to forfeit twenty pounds, one-half to the Crown and one-half to the person who sued for the same. To the student of modern politics this first election law of 1725 contains much that is interesting as well as amusing.

the legislature at least once in three years and for triennial elections. This act was assented to very reluctantly by Burnet, and was disallowed by the home government.<sup>1</sup>

The instructions of Montgomerie contain no articles altering essentially the constitution of the assembly.<sup>2</sup> He was, however, forbidden to assent to acts for the issue of bills of credit unless they contained a clause suspending their operation until approved by the Crown.<sup>3</sup> In practice this proved a decided limitation upon the house. Montgomerie was also warned not to approve of any act running for less than two years, as in such cases the law would expire before the Crown could act upon it; nor was he to assent to any act once disallowed or to an act disallowing any statute already passed, even though it had not received the royal approbation, unless express leave was first obtained from the Crown.<sup>4</sup> These clauses were not, strictly speaking, legal checks upon the power of the assembly, though they, of course, amounted to the same thing.

Under Montgomerie the tenth assembly, of which Kinsey was speaker, passed an act for the freedom of assemblies.<sup>5</sup> This act ordered that if any member of the assembly accepted a place of profit from the Crown or governor, his place should become void, and a writ for the election of a new member should be issued. So also anyone who, by reason of any office, pension, or salary from the Crown, was by the laws of Great Britain disabled from sitting in par-

<sup>1</sup> Allinson, *Statutes of New Jersey; New Jersey Archives*, vol. v, p. 192.

<sup>2</sup> His 13th article, however, again directed that the requirement in personal property be five hundred pounds sterling for members of assem-

liament, should also be disabled from sitting in the assembly of the province, and, if any such person should presume to sit, he was to forfeit fifty pounds.

During the brief and unsatisfactory rule of Cosby there were no further alterations.

Such was the legal position of the assembly of the province of New Jersey as defined in the commissions and instructions of the governors and the laws of the province. It can hardly be said, however, that these convey a very accurate idea as to the place the assembly actually occupied in the machinery of government. Even more than in the case of the governor and of the council, a study of the assembly at work is requisite for him who would realize what the lower house really contributed to the history of the province. A most vital part of the assembly's work can be best understood by observing it in conflict with the executive and the upper house. Before considering the great political struggles of the province's history, however, some statement as to what the assembly habitually did in carrying out the legal powers treated in this present section is highly desirable.

## CHAPTER XXI

### THE GENERAL ASSEMBLY IN ACTION

It is the purpose of this section to indicate briefly the manner in which the general assembly performed its duties, and to show the customary sphere of its activity in practice. Elsewhere we shall consider in detail the struggle between this body and the executive, and note the steps by which it slowly but materially increased its powers at the expense of the governor and council.

Sessions of the assembly were held regularly upon call by the governor.<sup>1</sup> Their frequency depended, of course, upon the political circumstances of the province. In all twenty-seven meetings took place between 1703 and 1738. Before the accession of Burnet, sessions were more frequent, owing to the short periods for which the revenue was voted. In Burnet's administration of seven years only four sessions were held; Montgomerie summoned two; while during the long interval from the death of Montgomerie to the commissioning of Lewis Morris, in 1738, only one meeting (1733) took place. Except upon great necessity the sessions took place in the spring, beginning in March or April, and running into the summer, or late in the autumn, and continuing through the winter, in some cases well into March. The

necessity of attending to their plantations—a circumstance which recalls vividly to our minds the extremely rustic character of the province.<sup>1</sup>

The governors used very actively their power to adjourn, prorogue and dissolve.<sup>2</sup> Hunter and Burnet, with real political tact, adjourned sessions, upon the request of the house, to seasons more convenient for the members.<sup>3</sup> On the other hand, both Burnet and Cosby employed their power to adjourn as a punishment, intending to bring intractable assemblies to their senses.<sup>4</sup> Burnet adjourned the seventh assembly from day to day for three weeks. Adjournment proved, nevertheless, a poor means of discipline, as the effect was simply to irritate the representatives. In 1722 Burnet began the practice of ending sessions by requesting the house to adjourn itself to a given date.<sup>5</sup> This was apparently intended as a compliment to the assembly, but the form was usually followed later.

No accurate general statement can be made as to the length of assemblies. There could be little complaint of the infrequency of elections, for during the union period only two houses lasted more than three years.<sup>6</sup> Yet it can scarcely be said that the governors complied with the wishes of the colony in this regard. Cornbury called new assemblies because the existing ones were intractable, and he hoped to secure more compliant ones. Lovelace and Ingoldsby ruled for too short a time to give any offense. Both Hunter and Burnet showed a decided inclination to retain satisfactory assemblies.

<sup>1</sup> *New Jersey Archives*, vol. xiv, pp. 80, 81.

<sup>2</sup> *Ibid.*, vol. ii, p. 494.

<sup>3</sup> *Ibid.*, vol. xiv, pp. 28-9, 80-1, 287-8.

Hunter dissolved the sixth assembly only because of the death of Anne, as the death of the sovereign was held to put an end to an assembly as to a House of Commons, and the seventh assembly he retained for the rest of his administration, a period of four years. Burnet retained this house which had been so compliant to Hunter, but it gave him so much trouble that he dissolved it after one session. The eighth assembly he retained for four years, until it was terminated by the death of George I. The policies of Montgomerie and Cosby, with regard to the calling of new assemblies, could not take shape because of their untimely deaths. Montgomerie held one election, as he had disagreed with the ninth assembly, but Cosby paid little attention to New Jersey anyway, and only troubled himself to call one session of the existing house.

It is interesting to note that, in spite of the general excellence of Hunter's rule, his use of the power of dissolution was perhaps more questionable than that of any other governor. When the death of Anne put an end to the sixth assembly, and the election for the new body was carried by the faction of Coxe, Talbot and other enemies of the governor, Hunter did, indeed, call a meeting of this new house, but, as was very frequently the case, the members were slow in assembling, and his excellency seized advantage of this fact to dissolve the assembly before it was organized. In so doing he acted upon the advice of his council, but the only reason given was that the house contained certain "notorious persons!"<sup>1</sup> Even Cornbury had not gone as far as this. In the new elections, however, Coxe was again success-

which he had hoped to escape. Hunter's conduct in this matter, as well as his policy of retaining the compliant sixth and seventh assemblies, was evidently the result of the fact that he had assumed the practical leadership of one of the political parties of the province. However much we may condemn his policy, it must, nevertheless, be remembered that he did not act from tyrannical motives, like Cornbury or Cosby. During his rule the assembly was certainly representative of the public opinion of the province, and after the agitation of Coxe had died away its work gave general satisfaction.

Previous to the appointment of Burnet, it was the common view in the province that the appointment of a new governor, like the accession of a new sovereign, required the choice of a new house. It is true that Ingoldsby held a session of the fourth assembly after the death of Lovelace, but, as he was merely a lieutenant-governor, this was not a precedent. Burnet, however, chose to retain the seventh assembly, which had done such good work for Hunter. The members assembled at his command, but refused to meet or organize as a house.<sup>1</sup> A deadlock with the governor followed, but Burnet eventually succeeded in persuading them that his course was legal, and a regular, though very unsatisfactory, session was held. Later the right of the governor to continue an existing assembly was approved by the lords of trade,<sup>2</sup> and when both Montgomerie and Cosby saw fit to continue existing assemblies, their power was not disputed.

With the exception of the short period during which



sions at Burlington was effective, the meetings of the assembly were held alternately at Burlington and Perth Amboy. Only one meeting during the entire union period took place elsewhere, and that was the third session of the seventh assembly under Hunter, which was held at Chesterfield or Crosswicks, a hamlet in Burlington County, because the small-pox was raging in the town of Burlington itself.<sup>1</sup> Burnet called the last session of his time at Amboy, although the previous session had been held at that place. The governor, by the advice of his council, was empowered by his instructions to change the regular order for reasons of weight, though nothing was said about this in the act of 1716. Burnet explained to the members that he summoned them at Amboy because he was momentarily expecting the arrival of his successor, and wished to be near New York to receive him.<sup>2</sup> The house replied, in an address, that the custom of having alternate sessions gave great satisfaction, but that they were entirely willing to meet at Amboy, provided the fact was not made a precedent.<sup>3</sup>

When a newly-chosen house first met, the members immediately waited upon the governor, and took the required oaths or affirmations in his presence. They then withdrew and elected a speaker. The choice of this officer was a matter of much importance, because it determined which party was in control of the house, and because the speaker was, of course, designated as its spokesman, and in a sense its leader. The house then waited upon his excellency and presented the speaker for his approval, which was always given. Cornbury ac-

<sup>1</sup> *New Jersey Archives*, vol. xiv, p. 35; vol. iv, pp. 264, 273.

cepted Jennings and Gordon, whom he detested, and Hunter approved of Coxe. After the speaker had requested the "usual privileges" for the house, and these had been granted, the governor delivered his formal opening speech to the assembled houses. The representatives then withdrew to their own chamber, and the actual business of the session commenced.<sup>1</sup>

Besides the speaker, the assembly of the union period had regularly two other officers, who were not, however, members of the house. These were the clerk and the sergeant-at-arms.<sup>2</sup> They were named by the governor upon the request of the house. Cornbury named clerks who were not acceptable to the house: first, William Anderson, a thorough tool, and later Capt. John Pinhorne, son of the second judge. Later governors, however, appointed persons acceptable to the majority. Because of the well-known character of Anderson, the third assembly, ever memorable for its brave stand against tyranny, took the position that when it was acting in committee of the whole it might exclude the regular clerk of the house and name one of its members clerk. The result, as we shall see later, was a struggle with the governor, which resulted not only in the victory of the house on the issue involved, but also in the dismissal of Anderson.<sup>3</sup> After the overthrow of Cornbury and his clique, however, the question as to the right of the house to name its own clerk when in committee ceased to have importance.

<sup>1</sup> *Assembly Journal*, *passim*. The procedure of the sixth assembly at its first session may be taken as typical, *Assembly Journal*, Dec. 6 and 7, 1710.

<sup>2</sup> The third assembly was the first to apply for a sergeant; *Assembly Journal*, April 19, 1707.

<sup>3</sup> *New Jersey Archives*, vol. iii, p. 227; *Assembly Journal*, April 19, 1707.

When the house assembled in its own chamber, after listening to his excellency's speech, it regularly went into committee of the whole to determine what action should be taken, and after consideration resolutions were voted. After peace had been established by Lovelace and Hunter between the executive department and the assembly, the resolution was nearly always a statement of the intention of the house to vote a certain sum for the support of the government for a stated number of years. Sometimes the house also announced that it would prepare other necessary measures. Under Cornbury, however, the third assembly had dared to maintain that it would vote no money until the grievances of the province were investigated and redressed.<sup>1</sup> After having thus in a way mapped out the work of the session, the house next proceeded to draw up an address in reply to the governor's speech. Except when conflicts were actually raging between the governor and the assembly, these addresses of the house were usually brief and general in character, merely expressing pleasure on meeting the governor and the desire of the assembly to serve king and country. New governors were congratulated upon their arrival. But, unlike the council, the house always avoided servility, although a humbleness of tone sometimes appears which hardly accords with modern notions of the importance of the representatives of the people.<sup>2</sup> After the address had been adopted, the house waited upon the governor, and it was read by the speaker.

Regular routine work was then begun by the introduction and discussion of bills. Sometimes these were

<sup>1</sup> *Assembly Journal*, Apr. 8, 1707; Oct. 27, 1707.

<sup>2</sup> The most interesting address is that to Montgomerie upon his first meeting with the assembly; *Assembly Journal*, Dec. 19, 1728.

brought in by private members, upon permission given by the house,<sup>1</sup> but the nature of more important measures was decided upon in committees of the whole, and special committees were named to prepare them. All bills received three readings, as at present. Special committees were regularly employed for the more minute study of all important bills and measures, but really vital measures, like those for the support of the government, were generally elaborated in committee of the whole. The "tyranny" of standing committees was, of course, unknown. Upon the amendment of bills by the council and the rejection of the amendments by the house, conferences were usually held at the request of one house or the other. Conference committees were named just as at present, and conferences took place which often lasted several days. But while the house not infrequently consented to the council amendments, upon matters of principle, as will be shown in the chapter on the struggles between the departments, the representatives regularly prevailed, because the house nearly always showed its determination to defeat all legislation rather than yield; while the council, composed of office-holders as it was, was usually unwilling to assume a similar responsibility.

Perhaps the most direct victory won by the house over the council was in the matter of its own title. When Ingoldsby requested legislation from the fourth assembly, providing support for the Canada expedition of Nicholson and Vetch, the house drew up the acts in the style of government council and general assembly, thus

new claim, as the question had come up during the proprietary period in East Jersey, but the proprietary assembly had based itself upon the phraseology of the original "Concessions" of Berkeley and Carteret. The council now strenuously objected to the pretensions of the house, because it was stated, in the governor's commissions and instructions, that governor, council and representatives together constituted the general assembly, and because that style had previously been followed in legislation.<sup>1</sup> The house replied by citing the practice in New York.<sup>2</sup> That the bills might be carried the council was forced to yield.<sup>3</sup> The controversy, of course, immediately reappeared during the session of the fifth assembly,<sup>4</sup> which, though favorably inclined to the lieutenant-governor, was strong for its rights as a body. The representatives proudly declared that the title of general assembly was the meanest one which could be given to their house,<sup>5</sup> and by their determination again forced the council to give way. By the precedent thus gained, the representatives of the Jerseys became officially known as the "General Assembly," and the title is still used.

During the work of the session the house communicated frequently with the governor, sometimes by means of formal addresses, but more usually by sending committees, with requests that he take certain action or give important information. All the governors made a great show of willingness to comply with reasonable wishes of the house, though Cornbury on several occasions refused requests on various pretexts.<sup>6</sup> His real willingness to

<sup>1</sup> *New Jersey Archives*, vol. xiii, p. 376.    <sup>2</sup> *Ibid.*, vol. xiii, p. 378.

<sup>3</sup> *Ibid.* vol. xiii p. 380.

<sup>4</sup> *Ibid.* vol. xiii p. 406.

take the house fully into his confidence was one of the strongest points of Hunter, who not only gave the house certain of his instructions, but also submitted the accounts of expenditures as a guide to the members in preparing the bills for support of the government.<sup>1</sup>

Throughout the work of the sessions there are numerous indications that much of importance went on outside of the chambers of the houses. The bribing of Cornbury, by both parties in turn, to influence his attitude toward the assembly, is a case in point. But more creditable examples are to be found in the cases of Hunter and Burnet, who, by holding friendly conferences with the members of the house, as well as by their general influence and control over the affairs of the province, seem to have directed to a large degree what went on in the assembly. The best illustration of this is perhaps the way in which, during the first session of the ninth assembly, Burnet persuaded John Kinsey, Jr., to discontinue his agitation for a separation from New York—the matter which later caused trouble for the inexperienced Montgomerie.<sup>2</sup> There also seems to have been at times no little of what we now call lobbying. The nearly successful effort of George Willocks, an outsider, to control the seventh assembly against Burnet, presumably to further his own business interests, is a striking example.<sup>3</sup>

The discussion of the character of the legislation of the general assembly hardly belongs in this section. Of the subjects regularly considered by the house, however,

almost exclusively with the house, as it was never seriously denied that money bills should there originate, and the house always successfully maintained its claim that, though the council might reject money bills, it could not amend them.<sup>1</sup> After it had decided in committee of the whole the total amount to be raised for support, the house, still in committee, fixed by resolution the salaries of the governor and of all the other officers, as well as the sums to be allowed them for traveling and other expenses. It then worked out the manner of laying and apportioning the taxes by which these sums were to be raised. Though the house sometimes respected the wishes of the governor in its work, in general it kept the whole field of taxation and the payment of salaries very jealously under its control. When we consider that it was in most cases necessary for the governor and council to accept any arrangement which the assembly saw fit to make, the tremendous power of the latter body becomes apparent. The work of preparing the act for support was usually rather prolonged. But as the same general principles of apportioning salaries and raising taxes were followed from session to session, we must conclude that the chief reason for the delay was the desire of the house to be assured that other measures which it regarded as necessary should be approved by the council before it gave away the key of power. When the house had at length prepared the act of support, it usually rose in a body and, led by its speaker, tended to the governor the gift of the people. This presentation of the support was usually, though not always, the signal for the close of the session.\*

<sup>1</sup> *New Jersey Archives*, vol. xiv, p. 194.

<sup>2</sup> *Assembly Journal*, *passim*.

In close connection with its control over the budget, the house developed certain other powers which were not strictly legislative. The governor's instructions gave the house the right to examine the accounts of all moneys expended under its own acts,<sup>1</sup> though it was certainly contemplated by the home government that the receiver-general should be responsible primarily to the governor and the treasury board in England. But from the beginning the general assembly, like all bodies of colonial representatives, showed its desire to hold the receiver-general responsible strictly to itself. In this purpose, as we shall see, it did not at once succeed, for, though Cornbury did unwillingly submit Peter Fauconnier's accounts, he refused the request of the house that his vouchers also be examined, thus defeating the purpose of the examination.<sup>2</sup> But, with the accession of Hunter, the right of the assembly to conduct a complete auditing of the accounts was established. He not only readily submitted the full accounts of the previous administrations,<sup>3</sup> but allowed the house to insist upon the attendance of the "treasurers," even to the extent of having the sergeant-at-arms bring Dr. Roberts, the treasurer of the western division, before the assembly to submit his accounts.<sup>4</sup> The actual work in auditing was done in most of the assemblies by the committee of the whole acting in coöperation with a special committee of the council, and often occupied several weeks. Nor did the house stop with a mere examination. It did not hesitate to condemn treasurers or other officers guilty of dis-



Thomas Gordon show. In such instances the assembly regularly addressed the governor to have the delinquents prosecuted, and in both cases the chief executive did as requested.<sup>1</sup> Indeed, Hunter, in the case of Gordon, formally questioned the representatives as to what action he should take.<sup>2</sup> Because of the strict control instituted by the house, the later treasurers give little cause of complaint.

The house not only audited accounts and secured the punishment of delinquents, but it also had much to do with the appointment of financial officers. Upon the request of the house, Lovelace named Miles Forster as receiver-general in place of Fauconnier, Cornbury's tool, and the house accepted him as "treasurer."<sup>3</sup> From that time on, although the house never gained the formal right to elect a treasurer, the governors always selected persons highly acceptable to the house. Hunter, upon the request of the house, adopted the practice of naming two treasurers, one for each division.<sup>4</sup>

Closely connected with this control of the treasury was the practice of the house after the adoption of the system of bills of credit. The bills of credit were, of course, issued under the authority of provincial statutes, which named commissioners to sign and otherwise handle the bills. The issue of the bills soon led to the establishment of the loan offices, which were also in the hands of commissioners named by the legislature.<sup>5</sup> At every

<sup>1</sup> *Minutes of the Supreme Court* (1704-1715), p. 121; (Perth Amboy, 1714-1731), p. 131.

<sup>2</sup> *Assembly Journal*, March 27, 1719.

<sup>3</sup> *Assembly Journal*, March 24, 1708.

<sup>4</sup> *Ibid.*, Feb. 4, 1718-19. Jeremiah Basse was named for West Jersey, and William Eires for East Jersey.

<sup>5</sup> The first loan office act was passed in 1723 under Burnet.

regular session after the institution of these new features of provincial finance, committees were named to join those of the council in investigating the conduct of the commissioners, and to destroy in proper form the expired bills of credit. We shall consider elsewhere the development of this new form of colonial currency, and shall then study the nature of the legislative control in its more special features. Suffice it to point out here that during the later part of the union period this field always occupied considerable attention during assemblies.<sup>1</sup>

But, important as its financial duties were, there was another field outside of the strictly legislative which also demanded much care, and which was at times even more troublesome to the representatives. It was, of course, their function to investigate and make known the grievances of the province, and to address the governor or, if need be, the home authorities for redress. The first and greatest work accomplished by the assembly in this direction was during the first meeting of the third assembly in 1707, when, led by Morris and Jennings, the house determined to prepare a remonstrance upon the condition of the province,<sup>2</sup> and, in spite of the governor's warnings,<sup>3</sup> conducted for two weeks an investigation of Cornbury's administration, and specially of the circumstances relating to the raising of the "Blind Tax" to bribe the governor. During this investigation it assumed the right to summon witnesses,<sup>4</sup> and to enforce their attendance by causing their arrest by the sergeant-

Hugh Huddy, a supporter of Cornbury, to release John Langstaff, who had been summoned as a witness, but against whom charges had been made, presumably to prevent his attendance on the house.<sup>1</sup> The result of the investigation was the preparation of a petition to the queen,<sup>2</sup> of a letter to Robert Harley, secretary of state, and of the celebrated remonstrance of 1707,<sup>3</sup> which the speaker, Samuel Jennings, won fame by reading to the indignant governor in person.<sup>4</sup>

The second and third sessions of the third assembly, cut short as they were by the power of the governor, were also occupied entirely with protesting against Cornbury's misrule.<sup>5</sup> During the second session, the answer of the house to Cornbury's reply to their remonstrance was drawn and entered upon the journal,<sup>6</sup> while in the session beginning May, 1708, the reply of the house to the governor's opening speech was virtually another remonstrance.<sup>7</sup>

The fourth assembly, which met under Lovelace, had naturally no call to remonstrate with the governor. Upon obtaining from him, however, a copy of the address sent to the Crown by Ingoldsby and the council during the recent administration, the assembly regarded it as necessary to prepare and send home a counter address denying the charges of Cornbury's clique, and begging the queen not to be misled.<sup>8</sup> Although the conflict between the governor and the assembly was

<sup>1</sup> *Assembly Journal*, Apr. 30, May 1, 1707.

<sup>2</sup> *New Jersey Archives*, vol. iii, p. 171.

<sup>3</sup> *Ibid.*, vol. iii, p. 173.

<sup>4</sup> Smith, *New Jersey*, p. 295.

<sup>5</sup> *Assembly Journal*, Oct. 27, 1707.

<sup>6</sup> *Ibid.*, Oct. 29, 1707; *New Jersey Archives*, vol. iii, p. 242.

renewed under Ingoldsby, the peculiar circumstances of his administration brought it about that no great amount of time was spent by the assembly in remonstrances or addresses.

✓ But under Hunter the assembly did important work in this field on several occasions. Hunter's first house prepared and presented to the governor elaborate charges against Secretary Basse<sup>1</sup> and William Hall, the county judge of Salem County,<sup>2</sup> as well as a memorial upon the recent perversions of justice,<sup>3</sup> which were the result of a lengthy investigation. While examining the misconduct of Hall, the house caused the sheriff of Salem County to be brought before it under arrest by its sergeant-at-arms,<sup>4</sup> and also examined Capt. William Dare, sheriff of Cornbury's time.<sup>5</sup> ✓ The overthrow of the adherents of Cornbury in the council, however, soon rendered such steps unnecessary. It was not until the seventh assembly, which met in April, 1716, and in which Col. Coxe and his followers had a majority, that the house again drew up a vigorous remonstrance. Since Hunter had, in accordance with his instructions, but contrary to the unconfirmed act of 1709, called the session at Amboy instead of Burlington, the assembly drew up an address demanding that they be adjourned to the West Jersey town.<sup>6</sup> When the governor refused to do this, the house turned to other grievances, deciding, among other things, to draw an address against Hunter's action in dissolving the recently elected assembly before it had met.<sup>7</sup> Such was the show of hostility that on April 28th

<sup>1</sup> *New Jersey Archives*, vol. iv, p. 71.

<sup>2</sup> *Ibid.*, vol. iv, p. 79.

<sup>3</sup> *Ibid.*, vol. iv, p. 87.

<sup>4</sup> *Assembly Journal*, Jan. 20, 1710-11.

<sup>5</sup> *Ibid.*, Jan. 4, 1710-11.

<sup>6</sup> *Ibid.*, Apr. 7, 1716.

<sup>7</sup> *Ibid.*, Apr. 26, 1716.

Hunter prorogued the assembly until May 7th.<sup>1</sup> This step proved a happy expedient for the chief executive, since Coxe and his supporters endeavored to checkmate him by staying away from the sessions when the house reassembled. The supporters of Hunter were thus enabled to control the house,<sup>2</sup> and the prompt expulsion of Coxe and his chief adherents rendered this control permanent. The harmony between the governor and the house resulted, as usual, in the latter body applying itself diligently to routine work in the field of legislation.

Not until the accession of Burnet did the assembly again endeavor to bring forward important grievances. As is shown elsewhere, the unwillingness of the new governor to arrive at an understanding with the clique of proprietors led by Willocks and Johnstone resulted in a rather violent clash between him and the seventh assembly, which he had decided to continue in existence, although it had been chosen under Hunter.<sup>3</sup> With the precise points of conflict, which related chiefly to technical questions of privilege, we need not concern ourselves here. Suffice it to say that the assembly spent much of its time in drawing up a set of resolutions<sup>4</sup> and in preparing two rather lengthy addresses, maintaining its contentions, and by implication, at any rate criticizing Burnet.<sup>5</sup> There seems little doubt that in the main the leaders of the assembly were acting from political rather than patriotic motives, though several of their contentions seem highly proper from the modern democratic point of view.

During the remainder of Burnet's administration the

assembly found little occasion for remonstrances or addresses except those of a formal nature. We have already seen, however, how during the last legislative session of Burnet's time, the desire long felt by the province to have a separate governor was brought forward as an issue by the restless and energetic John Kinsey, Jr. It has also been shown elsewhere how the effort to bring this subject to the attention of the home authorities was temporarily checked by Burnet,<sup>1</sup> but how, under his successor, Montgomerie, the assembly, after a serious disagreement with the governor, at length succeeded in formulating and forwarding an address to the Crown, praying for complete separation from New York.<sup>2</sup> With this final victory the assembly may be said to have concluded its work during the union period, as mouth-piece for expressing formally the grievances and desires of the people of the Jerseys.

It seems almost needless to point out that though, after the accession of Hunter, the province was in little danger of tyranny, the function of the assembly, just described, was nevertheless one of the most vital importance. The firmness of the house in publicly exposing the corruption of Cornbury in 1707 certainly contributed materially to his overthrow, and the knowledge that the assembly was only too eager to take up any case of corruption or maladministration must have acted powerfully to prevent such abuses.<sup>3</sup> As representing in this way the demands of the inhabitants of the colony, the history

matters of prime importance. During the sessions numerous addresses were prepared to the governors, asking for more specific changes. Thus the governors were regularly asked to name clerks, sergeants and door-keepers for the assembly. Sometimes they were requested simply to give information or to allow the representatives a sight of certain of their instructions.<sup>1</sup> Hunter, as we have seen, was requested to name two treasurers instead of one,<sup>2</sup> while Burnet received an address requesting that he appoint a chief justice resident in the province.<sup>3</sup> Some of these special addresses, like those last mentioned, were of considerable importance. All the executives made a brave show of complying with such wishes when formally expressed by the "lower house," and the wise ones, like Hunter and Burnet, did so in fact.

Because of its power in this regard the house was continually receiving petitions of all kinds. These, however, generally demanded legislation of some sort. Several asked for the naturalization of persons of foreign birth; others for changes in county lines. In 1722 the new county of Hunterdon asked representation in the assembly.<sup>4</sup> The most important were the petitions which complained of grievances, like those of Peter Blackfield, under Ingoldsby and Hunter.<sup>5</sup> It is not possible here to attempt any catalogue of such petitions, especially as the more important are considered in the chapter on conflicts between the departments of government. But it must be noted, in considering the duties of the assembly, that nearly every session brought such prayers, and that they always received at least formal consideration.

<sup>1</sup> *Assembly Journal*, Jan. 3, 1710-11.

<sup>2</sup> *Ibid.*, Feb. 4, 1718-19.

<sup>3</sup> *Ibid.*, Nov. 23, 1723.

<sup>4</sup> *Ibid.*, Apr. 4, 1722.

<sup>5</sup> *Ibid.*, June 28, 1709 and Dec. 15, 1710.

Among the most important powers of the assembly were those of determining the qualifications of its own members, of maintaining discipline over them, and of expelling them if necessary. Questions relating to these matters at times received much care and attention, and in several cases, where the parties were nearly balanced, had important results. Even the most hasty consideration of the work of the assembly in exercising these powers, however, shows plainly two facts: first, that in the choosing of representatives there was often much carelessness and irregularity, if not something worse; and second, that the assembly in judging such questions was nearly always guided by party feeling. It is nevertheless also true that, after the settling of the disputes growing out of the misconduct of Cornbury, there is much less to which a modern student can take exception.<sup>1</sup>

We shall consider first the more important questions of disputed election and of the determination of qualifications. It will be remembered that, at the choice of the first assembly, the members for East and West Jersey respectively were chosen, not by districts, but at large,<sup>2</sup> the poll being held supposedly at some central point in each division. The struggle in East Jersey between the proprietary and anti-proprietary parties, which had only recently resulted in the violence of "the revolution," was, of course, bitter, while the control of the house was of vital importance. Thomas Gordon, the well-known proprietor, was, however, sheriff of Middlesex, and to him as high sheriff of East Jersey the writs for the election were directed. The majority of the members returned were of the "proprietary interest."<sup>3</sup>



No sooner was the assembly organized, however, than a petition was received from John Royse, John Bowne, Richard Salter, Anthony Woodward and William Lawrence, all prominent members of the anti-proprietary faction, complaining of the undue election of five East Jersey members, including Col. Richard Townley, John Harrison and Jedidiah Allen.<sup>1</sup> A copy was at once given to Gordon, and he was given time to answer. On November 13 Salter attended and prayed that he with the others might have leave to call as many witnesses as they should need. This request the house granted, but cautiously stipulated that they were not to exceed twenty,<sup>2</sup> and when, three days later, Capt. John Bowne asked that summons be granted for three evidences against Gordon who were unwilling to appear, the house would take no action.<sup>3</sup> On the afternoon of the same day the Gordon case was taken up. Gordon delivered his answer, and his witnesses were sworn.<sup>4</sup> On the 17th the case was continued. On question as to whether Gordon's evidences be heard by the assembly as a house or in committee of the whole, it was decided that the members would act as a house. The witnesses were then examined.<sup>5</sup> On the next day it was voted that the evidences produced by Gordon were sufficient, and that no further evidence be allowed, and then, upon motion of Gordon himself, the representatives voted that the petition be dismissed, and that the members returned were duly elected.<sup>6</sup>

There can be little doubt that, whether Gordon was technically guilty of a false return or not, the members

chosen did not fairly represent the people of East Jersey. Although the requirement of the ownership of one hundred acres of land for the suffrage shut out many of the adherents of the anti-proprietary party, a study of the patents and surveys of East Jersey indicates that a sufficient number of persons of New England origin, and identified with the opposition to the proprietors, must have been qualified to constitute a majority.<sup>1</sup> Indeed, that such was the case was specifically stated by Col. Quarry, who, though bitterly against the proprietors, was later admitted by Governor Hunter himself to be both efficient and honest.<sup>2</sup> Quarry assured the lords of trade that the proprietors could bring to the polling-place only forty electors, while the other party had between three and four hundred, and could easily have brought more. The result, according to him, was accomplished by Gordon through the trick of adjourning the poll, so as to force "the country" to delay "in a place without all accomodations."<sup>3</sup> That this statement of the case was essentially correct is shown by the letter of Lewis Morris to the secretary of state of February, 1707-8, an interesting and able document transmitted with the results of the great investigation of the third assembly into Cornbury's maladministration. The whole letter is a denunciation of Cornbury and his allies, but, in speaking of the election of 1703, Morris frankly admits that "the Basse faction" were a majority in East Jersey, but that they lost the election through "an artifice of their opponents."<sup>4</sup> That the consideration of the dispute

by the assembly was a farce, the house journal clearly shows, and the matter is more ridiculous when we remember that Gordon himself was the speaker of the assembly.

We have dwelt upon the circumstances of this case because it was important in itself, since it involved the control of the house. But fairness also requires that it be stated that certain members, at any rate, of the proprietary party, by their odious juggling with this election, and by the bribe paid by them to Cornbury,' actually initiated that policy of dishonesty and lack of scruple in public affairs which their opponents so readily took up. The conduct of Gordon does not justify the action of Salter and Bowne in raising "the Blind Tax," but it helps to explain it. Doubtless we should not expect a higher political morality in the Jerseys than in England and in neighboring colonies, but it must ever be a source of regret to all true Jerseymen that our colonial annals are fouled by such transactions.

Immediately after the opening of the first session of the second assembly, in November, 1704, a petition was received from five Quakers of Burlington, among whom were Hugg and Gardiner, complaining that an untrue return had been made by William Fisher, sheriff of Burlington, one of Cornbury's creatures.\* As, owing to the nefarious exclusion of the "three members," the house had at this time an anti-proprietary majority, it was hardly to be expected that justice would be done. Consideration of the petition was postponed from time to time. Finally, on December 5th, both the petitioners and Fisher were heard, but no decision was made. On

the next day, however, the house voted that the petition was "frivolous," and that those returned had a right to sit.<sup>1</sup>

The third assembly, rendered so illustrious by its protest against Cornbury, curiously enough had no case of disputed election. The fifth assembly, meeting in 1709 under Ingoldsby, was obliged to consider several cases, however, and seems, in this regard as in several others, to have shown less party animosity than the other earlier assemblies. Peter Sonmans presented a petition against the election in Perth Amboy, and was given a hearing. He was answered by Gordon, and the house decided for the proprietary candidate.<sup>2</sup> A double return had been made from Burlington Town,<sup>3</sup> and in a hearing on December 3, 1709, Coxe, Wheeler, Gardiner and others testified.<sup>4</sup> After full consideration, the assembly voted that there had been irregularities on both sides, and ordered a new election.<sup>4</sup> Ingoldsby, after considering the request for a new writ and consulting the council, sent a message to the house stating that, as the sheriff of Burlington was a county officer he was not a proper person to receive the writ. Ingoldsby therefore directed the writ to the town constable.<sup>5</sup> But when the return was again made, a protest against it was received from the Quakers Deacon and Burg.<sup>6</sup> The house, however, rejected this and the choice stood. Protest was also received against a return from Somerset, but this, too, was rejected.<sup>7</sup>

The meeting of Hunter's first assembly—the sixth—in

<sup>1</sup> *Assembly Journal*, Dec. 6, 1704.

<sup>2</sup> *Ibid.*, Dec. 3, 1709.

<sup>3</sup> *Ibid.*, Dec. 1, 1709.

<sup>4</sup> *Ibid.*, Dec. 3, 1709.

<sup>5</sup> *Ibid.*, Dec. 6, 1709.

<sup>6</sup> *Ibid.*, Dec. 13 and 14, 1709.

<sup>7</sup> *Ibid.*, Dec. 14, 1709.

1710, brought numerous petitions, most of which were manifestly due to political motives. After Thomas Gordon had sent a petition urging that Gershom Mott, of Monmouth, well known as an active opponent of the proprietors, was not properly qualified,<sup>1</sup> the latter retaliated by presenting petitions against the elections in Perth Amboy and in Middlesex.<sup>2</sup> Apparently none of these protests was regarded seriously, as the house proceeded to business, and later voted that the elections were fair, and that Mr. Mott should serve.<sup>3</sup> A more important matter came up regarding the election in Burlington Town. Protests were received from divers of the inhabitants, and they were immediately considered in committee.<sup>4</sup> It was held that all freeholders in Burlington and all other towns, though not residing therein, had a right to vote. But all who were supported by charity or who, by reason of poverty, did not pay taxes were declared incapable. The house, therefore, made application to Hunter for a new writ, which was forthwith issued.<sup>5</sup> Although in the third session of 1713 an investigation was made into the proper form of writs and returns made thereon, there were no further disputes regarding proper elections until the meeting of the seventh assembly.

The seventh assembly, meeting in April, 1716, was notable because of the struggle between Col. Coxe, its first speaker, and the governor. But curiously enough, there were no heated election contests. At the beginning it appeared that Coxe had been chosen in English fashion for both Gloucester and Salem Town. He de-

<sup>1</sup> Assembly Journal, Dec. 8, 1710.

<sup>2</sup> *Ibid.*, Dec. 16, 1710.

clared to serve for Gloucester, and a new election was ordered in Salem.<sup>1</sup> A few days later, however, the house ordered William Harrison, sheriff of Gloucester, to appear and answer charges relating to the election of representatives.<sup>2</sup> Harrison appeared and charges were delivered against him in writing by Coxe.<sup>3</sup> Harrison, after time had been given, replied. But, upon consideration, the house voted that the action of the sheriff in adjourning the poll, on Feb. 10th, from "the field near John Kay's to the house of William Cooper, several miles distant," without consent of the candidates, was contrary to law and the right of the subject. It was therefore ordered that Harrison be reprimanded by the speaker, and that a bill be brought in to regulate the elections.<sup>4</sup> But before this could be done Hunter prorogued the hostile house, and when it met again, on May 7th, the absence of Coxe and his party gave its control to the supporters of the governor, led by John Kinsey. The expulsion of the protesting members led to the holding of new elections in several of the counties. But, though some difficulty was caused by the returning of ineligible persons, the house was not called upon to decide any election disputes.

With the general subsidence of political heats under the respectable rule of Burnet, we find few cases of disputed elections. In the last session of the eighth assembly, however, held in 1725, there was a bitterly contested poll in Burlington and Hunterdon Counties between Mahlon Stacy, representing the Quaker interest, and

considerable attention. Since the return of the writ was found to be improper, Charles Weston, sheriff of Burlington, was arrested and brought before the house to explain why he had made it. The charge was brought against him that he had assumed authority belonging to the house. But the sheriff humbly asked pardon, explaining that he had acted only through ignorance. He was dismissed with a severe reprimand.<sup>1</sup> Meanwhile Coxe had been given an opportunity to present his reasons why Stacy should not sit.<sup>2</sup> On July 28 and 29, 1725, both Coxe and Stacy were heard, and presented their evidences and affidavits. The house, after debate, at length decided that the election be not declared void, and that Stacy should have the seat.<sup>3</sup> Whether the decision was due to political motives or not, it is now impossible to say, though it seems not unlikely that it was. Still, unlike the cases in the stirring times of Cornbury, both parties were undoubtedly given a fair hearing. This case was the direct cause of the passage of the bill for the better regulation of elections, described in an earlier chapter.<sup>4</sup>

We find no further election decisions of importance during the union period.

The work of the assembly in determining the qualifications of its members follows closely the lines of its actions regarding elections, and the general conclusions as to motives must be the same. Among the members returned to the first assembly was the well-known Richard Hartshorne, of Monmouth, an anti-proprietary leader. Gordon, the speaker, and John Reid at once protested

<sup>1</sup> *Assembly Journal*, Aug. 10, 13, 1725. Weston had favored Coxe unduly in the taking of the poll.

that Hartshorne was not qualified.<sup>1</sup> The house therefore sent to know if Cornbury in council was pleased to swear or attest the evidences to appear before the house, or whether he would appoint some of the council to do so. His excellency, in reply, asked that Hartshorne might have leave to attend him. To this dangerous request the house acceded, but sent a committee, including Gordon and Reid, to accompany him.<sup>2</sup> The committee, on its return, reported that the governor had ordered Hartshorne to qualify himself as the law directed. Thereupon the house ordered Hartshorne to withdraw, and he did so.<sup>3</sup> Thus at the very beginning the proprietary clique disposed of a troublesome opponent.

The second assembly was made notable by the exclusion of the three West Jersey members, Thomas Lambert, Thomas Gardiner and Joshua Wright, upon the ground that they did not own the requisite amount of property.<sup>4</sup> It was, of course, the boldest sort of a political scheme on the part of Cornbury and his new allies, the anti-proprietary party. The exclusion of the three Friends after the first session was, however, not the work of the assembly, but of the governor and council. Cornbury, in refusing to admit the three members to attest, took the ground that he also had a right to judge of the qualifications of representatives.<sup>5</sup> Because this claim led to a fierce struggle between the governor and the house, this matter will be considered at length in the chapter on

<sup>1</sup> *Assembly Journal*, Nov. 16, 1703.

<sup>2</sup> *Ibid.*, Nov. 16, 1703.



the conflicts of departments. Suffice it to say here that even the anti-proprietary assembly would not support Cornbury in his effort to exclude the three Quakers indefinitely,<sup>1</sup> that the three members obtained their seats at the second session,<sup>2</sup> and that Cornbury was reproved by the home authorities for his conduct.<sup>3</sup>

Possibly because of the recollection of Cornbury's tyrannical interference, the question of proper qualification does not seem to have been raised again until Hunter's time. When the sixth assembly met in 1710, Thomas Gordon sent a petition urging that Gershom Mott of Monmouth was not qualified, and Dr. Johnstone sent another against Major Sandford and Mr. Van Buskirk, of Bergen.<sup>4</sup> Upon investigation by the house, the persons attacked were, however, declared qualified.<sup>5</sup>

During the early part of the seventh assembly, when Coxe was speaker, more interesting cases arose. On April 24, 1716, the house requested Hunter to qualify William Clews, member from Salem County. But when he came before the governor, Clews declared that he had never taken an oath. Thereupon Hunter, who understood that Clews was neither a Quaker nor a "reputed Quaker," refused to qualify him, taking the position that the privilege of affirmation was granted to the Friends alone. The house, however, promptly sent a committee to inform Hunter that Clews was "a reputed Quaker." The governor then qualified him by affirmation.<sup>6</sup>

Meanwhile objection had been raised to the qualifications of Thomas Farmar, of Amboy, a staunch follower

<sup>1</sup> *Assembly Journal*, Oct. 18, 1707.

<sup>2</sup> *Ibid.*, Oct. 26, 1707.

of the governor.<sup>1</sup> Action was for a time postponed, but on April 28 the matter was taken up. On a motion that Farmar withdraw while his qualifications were discussed, the vote was a tie. Farmar himself offered his vote, but it was voted that this should not be allowed. When the question was again put, it was carried that Farmar withdraw. He was given till the next Monday to prove his right to sit,<sup>2</sup> but there is no doubt that he was marked by the majority for sacrifice because of his political position. But before he could be driven out, the prorogation by Hunter and the resulting expulsion of Coxe and his followers changed the complexion of the house. With Kinsey as speaker, it was promptly voted that Farmar was qualified.<sup>3</sup>

Another example of disqualification occurred during the stormy meeting between Burnet and the seventh assembly in 1721. At this session, of which we have only an imperfect record, Burnet believed that a West Jersey member was declared lacking in the required qualifications because he was willing to support the governor. When new members were chosen from Middlesex and Salem Town, the house requested Burnet to send the clerk of the Crown with the rolls of oaths to qualify them before the house.<sup>4</sup> This request led to a heated controversy, since the governor took the stand that new members must be sworn before him in person.<sup>5</sup> He admitted that in one or two cases the governor had dispensed with the ceremony, but resolutely maintained

<sup>1</sup> *Assembly Journal*, Apr. 10, 1716.

<sup>2</sup> *Ibid.*, Apr. 28, 1716.

<sup>3</sup> *Ibid.*, May 21, 1716.

<sup>4</sup> *New Jersey Archives*, vol. xiv, p. 154.

that the power must be always his to require it.<sup>1</sup> In spite of the failure of the session, Burnet did not give way on this point.

We find no other important case of disqualification during the union period except that in 1733 the tenth assembly, under Cosby, ordered a new election in Somerset County to provide a member in place of Isaac Van Zant, who had accepted the office of sheriff, and thus disqualified himself under the recent act barring office-holders from being representatives.<sup>2</sup>

Of more interest is the action of the assembly in maintaining discipline and in using the power of expulsion. The most common evil with which the house had to deal was absence. At almost every session numerous of the members duly chosen were late in arriving, and in several instances they absented themselves for long periods. With a few notable exceptions, these absences were not due to political reasons, but were caused sometimes by private business, sometimes by absence from the province or by illness. In a few cases it appears that the members had actually not been informed of the time of holding the sessions. The difficulties of travel no doubt had much to do with mere tardiness.<sup>3</sup>

The earlier assemblies did not suffer from the absence of members as much as the later ones, although in the first assembly so prominent a person as Col. Richard Townley did not attend the first session at all, and was a week late in attending the second.<sup>4</sup> Afterward, however, it became necessary to take action in the matter, and when members disregarded the orders of the assem-

bly to attend, the sergeant-at-arms was sent to arrest and bring them to their duty. This course appears to have been followed first by the fourth assembly of Lovelace's time, and Capt. William Morris and Enoch Machilison had the doubtful honor of being the first members so sent for.<sup>1</sup> The most extreme case was that of Jacob Spicer, of Cape May, who, though originally chosen a member of the seventh assembly which first met on April 4, 1716, did not attend until December 28, when he was "brought up" by the sergeant.<sup>2</sup> Spicer explained, however, that he had had more than ordinary occasion for absence, that he had intelligence that the house had been adjourned because of the small pox, and that he was preparing to come when the sergeant arrived. He prayed the house not to consider his absence a contempt. Whatever the validity of these excuses, the house saw fit to accept them, and Spicer was admitted to his seat.<sup>3</sup>

Because of the proper strictness of the house regarding absence, members having important business sometimes asked leave-of-absence, a request which the house did not always grant. From the beginning of the royal rule until Hunter's time, a majority of the members had been regarded as a quorum.<sup>4</sup> The conflicts of Hunter and Burnet with the seventh assembly, however, showed that under certain circumstances such a rule as this might be dangerous to the power of the house. The eighth assembly therefore decided that sixteen of the twenty-four members should be a quorum.<sup>5</sup> This be-

<sup>1</sup> *Assembly Journal*, March 8, 1708-9.

came the rule, but it was subsequently modified by a vote allowing thirteen members to organize, adjourn and compel the attendance of absentees, though not to do business.<sup>1</sup>

The house was also compelled to exercise its authority in not a few cases of quarrels between its members or between members and outside parties. These cases usually related to the use of insulting language or to efforts to cast reproach or contempt upon representatives. In times of party conflict such occurrences seem to have been rather frequent, as was not unnatural in a frontier society. Most of these incidents appear trivial, if not actually ridiculous, after this lapse of time, but they certainly did not so appear to those concerned in them.<sup>2</sup>

During the session of the fifth assembly in 1709, for example, Captain Duncan drew his sword on Mr. Sharp, another representative, and tried to kill him, "etc." For this offence Duncan was made to acknowledge his fault before being allowed to take his seat.<sup>3</sup> But the overthrow of Coxe and his party in 1716 caused especially bitter feeling in the province, and rendered the members of the loyal party in the assembly extremely unpopular in certain districts. The supporters of Coxe added fuel to the fire by circulating various writings attacking their opponents. Thus stung to action, the reorganized seventh assembly named a committee on libels, with power to send for persons and papers,<sup>4</sup> and numerous complaints of insults to members were brought before the house. William Lawrence reported that he had been insulted by one

sembly. The house voted the words false and scandalous, and ordered the sergeant to arrest Johnstone, but he, having notice, escaped.<sup>1</sup> A more serious charge was soon after made against Major Sandford and Thomas Van Buskirk, of Bergen, for scandalizing Philip Schuyler, the representative of the same county. Sandford and Van Buskirk were brought in by the sergeant and charged with reporting that Schuyler "drank a health to the damnation of the governor and the justices of the peace." Sandford acknowledged this utterance, and presented an affidavit of John Wright, coroner of Bergen, to prove it. Schuyler denied the statement of affidavit, but admitted that they had quarrelled and that he had kicked John Wright. Schuyler was ordered to withdraw and given leave to go home and collect evidence. Sandford and Van Buskirk were now discharged without paying fees. Finally on February 20, 1718, the house considered the case, both Schuyler and Wright attending. Wright desired more time to produce his proof, but was asked to name the persons to whom he related what passed between him and Schuyler. Three were called, but none remembered the words charged. The house then voted that Schuyler was not guilty, and he took his seat.<sup>2</sup>

This case is highly typical, but, after the passing away of the excitement, such brawls became more infrequent. The most striking later case was in 1730, when, during the first meeting under Montgomerie, Fenwick Lyell,

<sup>1</sup> *Assembly Journal*, Jan. 24 and Feb. 3, 1718-19. William Lawrence was a member of the anti-proprietary party who had capitulated to their

the prominent proprietor, was charged with assaulting a member of the house.<sup>1</sup> Lyell fled from arrest, but soon after the end of the session again beat his enemy. For this act he was arrested by order of the house, but now humbly acknowledged his offense and begged pardon of the assembly and of the assaulted representative. He was then discharged.<sup>2</sup>

But the assembly was not infrequently called upon to apply discipline to offenses of a nature different from such outbreaks of anger or party feeling. In several important instances the power of expulsion was used in matters of much political importance. The first case appears at the opening of the famous third assembly in 1707. When the house, in April of that year, began its great investigation into the collection of the "Blind Tax," it called upon Capt. John Bowne, then a member from Monmouth, one of the most prominent leaders of the anti-proprietary party in East Jersey, and known to have been with Richard Salter, the leader in raising the bribe, to testify to the committee on grievances as to what he had done with the money.<sup>3</sup> Bowne refused to take oath, and the house then voted, with one dissenting voice, that he was in contempt. Next day it appeared that John Langstaff, one of the most prominent witnesses, had been imprisoned by the sheriff of Burlington at the suit of Capt. Bowne. The house then at once expelled him.<sup>4</sup> The conduct of Bowne had been such that the assembly was surely justified; by getting rid of him, however, they certainly removed a serious obstacle to the success of their investigation.

<sup>1</sup> *Assembly Journal*, June 30, 1730.

<sup>2</sup> *Ibid.*, July 1, 2, 6, 7, 1730, and May 15, 18, 24, 1733.

<sup>3</sup> *Ibid.*, April 29, 1707.

<sup>4</sup> *Ibid.*, April 30, 1707.

Such severity did not have to be resorted to again until the fifth assembly, under Ingoldsby. This assembly was rather queerly constituted from a party standpoint. The majority seems to have been unfavorable to the proprietors and not ill-disposed to Ingoldsby, though not bitterly hostile to the proprietary interests. The house ordered a bill prepared for settling the rights of the proprietors and purchasers of East Jersey, and referred it to a committee of which Thomas Gordon was chairman, but which had an anti-proprietary majority, including the bitter Elisha Lawrence and Mott, of Monmouth. The committee in due time reported that they had blotted out the entire bill except the title. Lawrence, who delivered the report, said he thought this was the best amendment they could make to it. But Gordon explained that Lawrence, contrary to his consent as chairman, "did blot out the bill," and that Mott had forcibly detained him in the room while Lawrence did so. The house voted both Lawrence and Mott in contempt,<sup>1</sup> and ordered them to be brought to the bar of the house to ask forgiveness and to acknowledge the favor of the house in not expelling them. This they did and were then reinstated.<sup>2</sup> But the motion to bring in another bill for the proprietors was squarely defeated. It seems not unlikely that the house had intended to smother the bill as gently as possible, but Lawrence and Mott by their violence had deranged the plan.

The triumph of the proprietary party in controlling Hunter's first assembly—the sixth—brought with it



the address sent by Lieutenant-Governor Ingoldsby and the council to the Crown in Cornbury's time. This they voted false and scandalous. It was then voted that no signer of the scandalous document was a fit member of the house unless he acknowledged his fault. But Major Sandford, then a representative from Bergen, but previously of Cornbury's council, admitted that he had signed, and, when asked to acknowledge his guilt, said that he had signed as a member of the council and was responsible only to the Crown. He was thereupon expelled. January 17, 1710-11.<sup>1</sup>

Immediately after the expulsion of Sandford, the house turned its attention to the conduct of Mott and Elisha Lawrence, who had made entry in the journal of the council of their reasons for defeating the bill appropriating money to support New Jersey's quota in the Nicholson-Vetch expedition to Canada.<sup>2</sup> It was well understood that their action had been part of a scheme to injure the Quakers by making them seem to be to blame for opposing the military measures of the Crown. The house had previously endeavored to obtain a sight of the reasons entered by the two Monmouth members, but had failed. Now, however, Hunter caused the clerk of the council to submit a copy.<sup>3</sup> The house, after considering them, resolved that the application made by Mott and Lawrence to have them entered upon the council books was an arraignment of the honor of the house.<sup>3</sup> Mott, who was then a member, was asked to acknowledge his fault, but hesitated, and was given further time to consider. Next day Mott replied that

wrong. He was then told to withdraw while the house considered his case. The house then debated the preamble and reasons given in the entry of Mott and Lawrence, and voted them false and scandalous. Mott was recalled, but once more refused to acknowledge his fault. Thereupon the house expelled him.<sup>1</sup>

But when the new elections were held in Bergen and Monmouth, both Sandford and Mott were returned. These returns the house, of course, rejected. Sandford, indeed, was arrested and brought before the assembly for uttering words that grossly reflected upon it. He succeeded, however, in explaining that his words did not refer to the existing house, and was dismissed. But Mott was declared incapable of sitting until he acknowledged his fault.<sup>2</sup>

At the third session of the sixth assembly Mott was again returned, but was once more kept out.<sup>3</sup> Monmouth then elected Elisha Lawrence, who was equally guilty with Mott. He was qualified, but the house voted that he should not be permitted to serve till he also had confessed his fault. But, like Mott, he remained stubborn and was expelled.<sup>4</sup> When he was again returned, the house, as in the previous case, resolved that he was incapable of sitting until he acknowledged his offence.<sup>5</sup> Meanwhile both Monmouth and Bergen had been long without members. A new writ had been issued for Bergen but not returned.<sup>6</sup> Finally, however, Philip Schuyler was qualified for Bergen on Feb. 2, 1713.<sup>7</sup> The electors of Monmouth were more stubborn. But even-

<sup>1</sup> *Assembly Journal*, Jan. 19, 1710-11.

<sup>2</sup> *Ibid.*, Jan. 29, Feb. 2, 1710-11.

<sup>3</sup> *Ibid.*, Dec. 8, 9, 1713.

<sup>4</sup> *Ibid.*, Jan. 4, 1713-14.

<sup>5</sup> *Ibid.*, Jan. 27, 1713-14.

<sup>6</sup> *Ibid.*, Jan. 6, 1713-14.

<sup>7</sup> *Ibid.*, Feb. 2, 1713-14.

tually, on Feb. 25, Elisha Lawrence drew up a paper regarding his conduct and presented it to the house. This explanation was voted satisfactory, and he was admitted.<sup>1</sup> As to its contents we can only guess. Apparently it was not the humble confession of fault which the house desired.

The punishment of Sandford, Mott and Lawrence was, of course, an effort by the assembly to take vengeance upon their opponents for the opposition they were offering to Hunter. But it appears only to have increased hostility instead of lessening it.

The seventh assembly, beginning in April, 1716, brought a more interesting use of the house's power of discipline. At the opening of the session this house was under control of Coxe, but so hostile was it toward Hunter that he adjourned it till May 7. In spite of the bitter protest which the house had offered against violating the act of 1709, requiring all sessions to be held at Burlington, Hunter persisted in ordering the assembly to meet at Perth Amboy. Coxe and his partisans therefore adopted the policy of absenting themselves to defeat the governor. Cornbury had thus been defeated by the second assembly, but Hunter was of different stamp. On May 7 a quorum did not appear, and the adjournment was continued for a week. On May 14 only nine members appeared; the governor then prorogued the assembly from day to day till the 17th, when the members present offered an address praying Hunter to take measures which would compel attendance.<sup>2</sup> His excellency therefore sent warrants "to several absentees," com-

manding them to attend or they "would answer the contrary on their peril."<sup>1</sup>

Four members, thus intimidated, obeyed, and a majority now being assembled, Hunter sent for them and spoke recommending them to meet and to choose another speaker in place of the rebellious Coxe, in order to enable themselves to send their sergeant for the absentees.<sup>2</sup> This advice the members, of course, followed, and elected as speaker John Kinsey, who, being a Quaker, was strongly opposed to Coxe. Hunter warmly approved the choice, and proceeded to open the session in due form by the usual speech. But the first business of the house was naturally regarding its insurgent members. Its first vote was that the absence of Coxe, to defeat the service "of the king and country," was a contempt and breach of trust. It was then resolved that he was a person unfit to sit in the house.<sup>3</sup> The case of William Lawrence, of Monmouth, was then taken up. He had not only absented himself, but had disobeyed Hunter's warrant, and the sergeant was ordered to bring him at once before the assembly. It was next resolved that Elisha Lawrence of Monmouth, Henry Joyce of Salem Town, William Hall and William Clews of Salem County, Jacob Spicer and Jacob Hulings of Cape May, Richard Bull of Gloucester, and David Ackerman and Henry Brockholst of Bergen, should repair at once to the house or answer the contrary on their peril. Each was ordered served with a copy of the order.<sup>4</sup>

Next day the house formally expelled Coxe.<sup>5</sup> But William Lawrence, who was brought before the house in

<sup>1</sup> *New Jersey Archives*, vol. xiv, p. 14; *Assembly Journal*, May 19, 1716.

<sup>2</sup> *Ibid.*, May 19, 1716.

<sup>4</sup> *Ibid.*, May 21, 1716.

<sup>3</sup> *Ibid.*, May 21, 1716.

<sup>5</sup> *Ibid.*, May 22, 1716.

custody, after hesitating and asking time, acknowledged his guilt and humbly begged the pardon of the house. He was therefore allowed to take his seat.<sup>1</sup> Soon after, upon application from the assembly, Hunter reported that the sergeant had not found the members of Bergen County at home, but had left the order for their attendance at their houses. The house at once voted them in contempt and expelled them: Brockholst and Ackerman.<sup>2</sup> Five days later the sergeant reported that he had left the orders of the assembly at the homes of as many of the absent members as he could. None of them paid any attention. The house thereupon voted them in contempt and expelled Hewlings, Bull, Hall, Clews and Joyce.<sup>3</sup> An exception was made of Spicer, because he had never attended any of the sessions, and had not even been qualified. He was voted in contempt,<sup>4</sup> and his arrest was ordered, as has been described above.

New elections were ordered in place of the expelled persons, and both Bull and Hall were reëlected, but the house would not receive them and ordered a new choice.<sup>5</sup> By the close of the next—the third—session of the seventh assembly all the vacancies but two had been filled.

Though the expulsion of Coxe and his party evidently aroused the bitterest feeling in the province, it proved nevertheless a masterstroke for Hunter, Kinsey and their party, for it gave the proprietary interest a renewed control over all the departments of the government. Coxe was forced from the Jerseys,<sup>6</sup> and his followers were soon overawed. The modern student can hardly help sympathizing with those who maintained that a law of the

<sup>1</sup> *Assembly Journal*, May 22, 1716.

<sup>2</sup> *Ibid.* May 25, 1716.

province was of more binding force than the governor's instructions. But in this matter, as in most of the rest, the issue was at bottom political; the struggle was one of parties, not of principles primarily, and the success of Hunter's policy was undoubtedly for the interest of the Jerseys.

So thoroughly were the angry feelings allayed that during the rest of the union period there occurred no further cases of expulsion or, indeed, of strong disciplinary measures over members of the house.

But any detailed description of the various fields in which the assembly exerted power may give a false impression. The chief work of the assembly was, of course, legislative—work which certainly took up the greater part of its time and attention. This was the more true also toward the close of the period, when the bitterness of the earlier party struggles had been to a great extent allayed. Under Burnet especially, the sessions were business-like and industrious in the extreme.<sup>1</sup>

Before leaving the subject of the assembly in action, there is, however, one other aspect of its work which must be indicated. It is undeniable that there was a constant tendency on the part of the representatives to enlarge their sphere of action at the expense of the other organs and officers of the province. No doubt, under the circumstances, this was a healthy tendency, but it naturally gave rise to conflicts, as will be hereafter more fully indicated, and to complaints of the aggressions of the house.

The house endeavored continually to dictate to the

to name "treasurers" agreeable to the house. Under Burnet, the house addressed the governor to dismiss the chief justice and to name some one residing in the province.<sup>1</sup> To this prayer Burnet yielded by naming the speaker of the house himself, William Trent.<sup>2</sup> The ninth assembly endeavored, though unsuccessfully, to secure the appointment of John Kinsey, Jr., as attorney-general.<sup>3</sup> The house also endeavored to establish court fees, though the instructions gave this power specifically to the governor. It tried to fix by law the times of meetings of the assembly and the duration of assemblies.<sup>4</sup> The General Assembly even tried on two important occasions to usurp the powers of the courts themselves: once under Ingoldsby, when a bill was prepared by it setting aside the judgment against Peter Blackfield and restoring him to his estate;<sup>5</sup> and once under Burnet, when a measure was sent up for compelling the estate of Thomas Gordon, the late treasurer, to pay the sum in which the auditing committee had found his accounts deficient.<sup>6</sup> Both of these measures were defeated with difficulty by the governor and council.

In New Jersey the assembly did actually succeed in establishing full control over one very important means of communication between the provincial government and the home authorities. This was in the matter of the provincial agent at London. At his last meeting with the assembly, Hunter, upon the urgent direction of the home government, asked for an appropriation for an agent. New Jersey was said by the board of trade to be

the only colony without one.<sup>1</sup> But the house, in spite of Hunter's great influence, was unwilling to make the expenditure.<sup>2</sup> In 1723, under Burnet, the house finally voted £100 for an agent, and engaged Peter La Heupe, well known as a representative of other colonies.<sup>3</sup> It was ordered, however, that the agent should correspond with the general assembly by letters directed to the speaker.<sup>3</sup> Thus La Heupe was really the agent of the house alone rather than of the entire provincial government, as Hunter and Burnet had intended. La Heupe does not seem, however, to have been continued as agent, but in 1727, when the feeling for a separate government was becoming strong, Richard Partridge was made agent on practically the same terms, and £100 was given him.<sup>4</sup> A committee, including Johnstone and Kinsey, was also named, to which £270 was ordered given to transmit to the agent as had been or might be directed.<sup>5</sup> During the ensuing years the committee kept up correspondence with the agent, presumably in defiance of the policy of Montgomerie against separation, and as has been indicated, Partridge contributed materially to the final establishment of a distinct executive for the Jerseys.<sup>6</sup>

The general aggressiveness of the assembly will, however, be more clearly indicated in the section on the departments of the government in conflict. It is hoped that a sufficiently clear idea of its character and usual work has been given to make plain the tremendous power which it displayed against both the chief executive and the council.

<sup>1</sup> *New Jersey Archives*, vol. xiv, p. 82.

<sup>2</sup> *Assembly Journal*, Jan. 23, 1718-19.

<sup>3</sup> *Ibid.*, Nov. 27, 1723.

<sup>4</sup> *Ibid.* Feb. 2, 1727.

<sup>5</sup> *Ibid.* Feb. 10, 1727.



## CHAPTER XXII

### EXECUTIVE AND LEGISLATIVE IN CONFLICT

The first assembly held under the royal government met on November 10, 1703, at Perth Amboy, with every outward appearance of harmony. It contained members of both the proprietary and anti-proprietary parties in East Jersey, as well as a considerable Quaker delegation from West Jersey. The majority, however, represented the proprietary interest, as was soon shown by the choice of Thomas Gordon as speaker. At the commencement of the session, the house, following the custom of similar colonial bodies, requested as privileges that the members and their servants be free from arrest during the session, that they might have free access to the governor's person, that they might have free speech and favorable construction in all debates, that in case of difference between the houses a committee of the council might be named to confer with one from the assembly to adjust and reconcile, and that the foregoing requests might be approved by Cornbury and entered on the council books.<sup>1</sup>

The governor addressed the house in a favorable speech, assuring them of the benefits of royal government, and making a plea for the reconciliation of past

in which bills should be passed. And lastly, following his instructions, recommended the raising of a revenue to support the government in proper dignity and the confirmation of the rights of the proprietors. He concluded by urging dispatch and unanimity.<sup>1</sup>

Immediately afterward, however, came the first note of discord, when Cornbury, though granting the other privileges requested by the house, refused their fourth request as an innovation.<sup>2</sup> Nevertheless, the house unanimously voted a congratulatory address to the governor, which shows no trace of suspicion as to his true character.<sup>3</sup>

But the harmony of action did not long continue. The assembly was almost immediately involved in a dispute as to the election of five of its East Jersey members, the validity of which was attacked by the anti-proprietary party.<sup>4</sup> With this quarrel we need not here concern ourselves, except to note that it made plain that Gordon and the proprietary interest controlled the house,<sup>5</sup> and led to the exclusion of Richard Hartshorne, one of the most prominent of their opponents.<sup>6</sup>

The further conduct of the house soon gave additional proof that it regarded the protection of the rights of the proprietors as its chief aim. The first bill reported was the so-called "Long Bill," confirming the proprietary title to the soil of the province, and thereby ensuring the payment of quit-rent, and quashing all claims arising from the Nicolls grants and the Elizabethtown purchase.<sup>7</sup>

<sup>1</sup> *New Jersey Archives*, vol. iii, p. 8.

<sup>2</sup> *Assembly Journal*, Nov. 10, 1703.

<sup>3</sup> *New Jersey Archives*, vol. iii, p. 11.

<sup>4</sup> *Assembly Journal*, Nov. 12, 1703.

<sup>5</sup> *Ibid.*, Nov. 18, 1703.

<sup>6</sup> *Ibid.*, Nov. 17, 1703.

<sup>7</sup> *Ibid.*, Nov. 22, 1703.

This bill was soon followed by another, prohibiting the unlicensed purchase of land from the Indians;<sup>1</sup> and a third for the enforcement of a tax of £1,400, laid in 1700 for the support of the proprietary government of West Jersey, the collection of which had been a failure.<sup>2</sup> A bill was also passed by the house determining the salaries and fees of its members.<sup>3</sup> Meanwhile, after having cared for the interests of the party it represented, the assembly agreed to raise £1000 for the support of the government for one year and £300 for representatives' fees, the salaries of royal officers, and other incidental charges.

This action was too much for Cornbury, whose interest in the whole proceeding came to an end when he saw the hopelessness of obtaining a satisfactory grant. He refused to approve any of the bills, with the single exception of that relating to Indian purchases, and ended the session with a sharp speech, on the ground that the season was too far advanced to allow of further discussion.<sup>4</sup> He still held out the possibility of reconciliation with the dominant party, however, by his statement that the members had at least learned where the difficulties in settling affairs lay, and by expressing the hope that when the assembly met in the spring they might be promptly removed. Meanwhile Cornbury, in spite of the fact that he had already received a substantial "gift" from the proprietary leaders,<sup>5</sup> had been led to negotiate, through Col. Robert Quarry, with the anti-proprietary party, with a view of arriving at an understanding, and assurance had been given that in a new

<sup>1</sup> *Assembly Journal*, Nov. 23, 1703.

<sup>2</sup> *Ibid.*, Nov. 26, 1703.

<sup>3</sup> *Ibid.*, Dec. 7, 1703.

<sup>4</sup> *Ibid.*, Dec. 13, 1703. *New Jersey Archives*, vol. iii, p. 28.

<sup>5</sup> *Ibid.*, vol. iii, p. 207.

election that faction was ready to choose men who would "effectually answer all the ends of government."<sup>1</sup>

The assembly did not meet the next spring, but was further prorogued by proclamation until September 1st, 1704,<sup>2</sup> when it finally came together at Burlington. Cornbury in his speech urged that a sufficient support be provided for the government, and stated the need of a good militia act and provision for the building and repair of high roads. He also said that the rights of the proprietors and the possessions of all the inhabitants claiming under them should be confirmed, but that he did not believe that this end could be accomplished by the bill prepared last session. Finally, he urged dispatch in order that he might attend the meeting of the assembly of New York at the beginning of next month.<sup>3</sup>

The house proceeding to business somewhat more promptly than at its first session, carried through a bill for "uniting and quieting the minds of all the Queen's subjects within this province,"<sup>4</sup> as also one for suppressing vice,<sup>5</sup> and made progress upon bills for laying out, regulating and preserving highways, for regulating negro and Indian slaves, for ascertaining the boundaries and limits of the counties, and for other useful objects. Meanwhile, however, bills for confirming the rights of the proprietors had once more made their appearance, which seem to have been similar in character to that of the first session, though now there were separate measures for East and West Jersey.<sup>6</sup> On September 12th the matter of support was taken up but the best that

year and £1,000 per annum for the next two years.<sup>1</sup> The progress upon the revenue bill was slow, and it became evident that the majority of the house intended to connect its fate with that of the proprietors' bills. Cornbury's patience and time were now exhausted. Summoning the house, he made a peppery speech, accusing them of delaying the revenue bill until they knew that he could not stay to pass it, and berating them for failure to even consider the defence of the province. With the declaration that they had failed both queen and country, he then dissolved the assembly.<sup>2</sup>

But while Cornbury made great show of righteous wrath against the assembly, there is good evidence to prove that his motives were far from disinterested. An investigation, later carried on by the assembly of 1707-8, brought together abundant proof that a corruption fund had been raised by the anti-proprietary party in East Jersey for the purpose of obtaining the dissolution of the assembly, and getting a new one hostile to the proprietary claims. The leaders in the movement, for which it must be admitted some of the proprietors had already set a precedent, were Richard Salter, who seems to have done most in the actual collecting of the "Blind Tax," and John Bowne. While it could not be shown definitely that Cornbury himself actually received the moneys thus gathered, the circumstantial evidence is almost conclusive against him,<sup>3</sup> in spite of his positive denial.<sup>4</sup> At any rate, at about this time his lordship went over entirely to the popular party.

The new elections were carried through in undue

haste.<sup>1</sup> But, in spite of the efforts to secure an assembly which would do what was required, the result was not wholly satisfactory. The new assembly met at Burlington, November 13, 1704, and contained John Bowne, Richard Salter and Richard Hartshorne, all prominent as opponents of the proprietors. Thomas Gordon, John Barclay, and other proprietors appeared among its members, however, and their supporters appeared to have a majority of two. Other means had therefore to be employed, and when the members presented themselves to be sworn or attested, Thomas Revell and Daniel Leeds, two of the council from West Jersey, who were parties to the agreement for obtaining an anti-proprietary house, objected to Thomas Lambert, Thomas Gardiner and Joshua Wright, three Quakers from West Jersey, on the ground that they were not qualified to serve, because they did not own the required amount of land. Cornbury therefore refused them the affirmations.\* Revell and Leeds at once petitioned the assembly, stating that they had good cause for suspecting the three members, but that they desired fourteen days in which to make their grounds of objection plain. After debate, this worthy petition was granted,<sup>3</sup> and when, on the next day the three members produced copies of surveys in proof of their qualifications, they were also put off by being granted time in which to make their case stronger.<sup>4</sup>

As the three members did not appear on the appointed day, it was voted that they should be heard only by peti-

Revell and Leeds were acquainted with the decision,<sup>1</sup> but appear to have been satisfied with what they had already accomplished. After further postponement for a day the three members were at last heard, and showed beyond dispute that they owned the required one thousand acres. The assembly therefore requested Cornbury that they be allowed to qualify themselves.<sup>2</sup> But before this could be done, Cornbury brought the session to an end on December 12th. Thus, by the most barefaced violation of the right of representation, his lordship and the anti-proprietary party secured a scant majority during the entire session. Their conduct had, however, aroused their opponents to the necessity of a more determined opposition.

The assembly had been adjourned till May, 1705, at Burlington, but although the governor and the members from East Jersey journeyed to that town at the required time none of the members from West Jersey appeared with the exception of those from the town of Burlington. The East Jersey representatives became uneasy at the turn things had taken, and petitioned to be allowed to return home. Cornbury consented, and the session was postponed until December, at Amboy.<sup>3</sup>

On December 15, 1705, the assembly at last met, although the members from the Western Division were still tardy about coming. The question as to the rights of the three members, which had thus remained unsettled for a year, at once came up, and now the majority of the house was strong against the governor. The house

posed a trust in him, he also, as well as the house, should be satisfied as to their qualifications. When it was represented to him that the three members had deeds and records which had satisfied the house, he agreed, however, to consider these upon the next day.<sup>1</sup> The members therefore attended the governor, and he took "minutes" of their proofs. But, instead of admitting them, he dismissed them, saying that he would send for them if he found occasion. But the house at last met the arbitrary conduct of Cornbury resolutely, and resolved that it would not proceed until its membership was full.<sup>2</sup> Their action was decisive, and the three members were qualified and took their places.<sup>3</sup> Thus the proprietors once more controlled the majority of the lower house.

Nor was Cornbury's action allowed to pass wholly unrebuked. In his letter of February 17, 1704-5, to the lords of trade, describing the first session of the second assembly, the governor passed over the affair in silence.<sup>4</sup> But the matter, with other abuses, was brought to the notice of the home government by a memorial from the West Jersey Society, received September 1, 1705.<sup>5</sup> In a later letter to Secretary Hedges,<sup>6</sup> as well as through Mr. Soper, his personal agent in England, Cornbury was obliged to explain his attitude toward the three members in order to justify his conduct in his later dealings with the assembly.<sup>7</sup> As a result, the lords of trade "advised" his lordship not to interfere with the privileges of the house.<sup>8</sup>

<sup>1</sup> *Assembly Journal*, Oct. 17, 1705.

<sup>2</sup> *Ibid.*, Oct. 18, 1705.

<sup>3</sup> *Ibid.*, Oct. 26, 1705.

<sup>4</sup> *New Jersey Archives*, vol. iii, p. 68.

<sup>5</sup> *Ibid.*, vol. iii, p. 68.

<sup>6</sup> *Ibid.*, vol. iii, p. 68.



Cornbury and his supporters had, however, already attained some of their objects. The first session of the second assembly had promptly carried through an act granting £2000 for the support of the government, though even the anti-proprietary party had been unwilling to vote this sum for longer than two years. Nevertheless, Cornbury had approved the act as the best that could be obtained.<sup>1</sup> The £2000 was to be raised in great part by a tax upon the lands of all inhabitants who had settled tenants, servants or slaves upon their real estate.<sup>2</sup> Thus the act of support also aimed a blow at the proprietors, many of whom had extensive grants, small portions of which they had settled by servants or tenants. The assembly, in addition, passed an act for uniting and quieting the minds of all her Majesty's subjects within this province, which put an end to all prosecutions for acts committed before 1703 except in the case of such offenses as treason or piracy;<sup>3</sup> and another altering the mode of electing representatives, so that all resident freeholders might vote for and be returned as members of the assembly.<sup>4</sup> This last measure was designed to take the control of the house from the proprietors, in whose favor the high property qualifications worked. The house also accepted a rigorous militia act sent down by the council, and aimed especially at the Quakers.<sup>5</sup> An apparently useful measure was passed for the improving of highways.<sup>6</sup> But this, too, served a party use, for in executing it every effort was made to construct roads so as to injure proprietary lands.<sup>4</sup>

<sup>1</sup> *Assembly Journal*, Dec. 12, 1704.

<sup>2</sup> *Laws Enacted in 1704* (Bradford print).

<sup>3</sup> *Ibid.*

<sup>4</sup> *New Jersey Archives*, vol. iii, p. 280.

Two other acts were passed—one for suppressing vice and one regulating negro and Indian slaves.<sup>1</sup> All the acts of this assembly however, except the measure against vice and that preventing prosecutions for acts before 1703, were eventually disallowed by the home government, but not, of course, before they had gone into effect, and accomplished something of their objects.<sup>2</sup> Cornbury, in his closing speech, expressed great satisfaction with the readiness of the house to agree with the council.<sup>3</sup>

The breach between the governor and the majority of the assembly over the qualification of the three members, however, destroyed the harmony between the executive and the legislature, as it eventually gave complete control of the house to Cornbury's opponents. The house, in the session of October and November, 1705, at length began business by preparing a sarcastic address of thanks to the governor, in which they expressed their gratitude for his favorable opening speech, and for his allowing them "an opportunity to prepare laws."<sup>4</sup> This done, they at once commenced the preparation of bills for confirming the rights of the proprietors, entrusting the work to a committee with a proprietary majority, including Gardiner and Lambert.<sup>5</sup> The house voted, indeed, to consider the recommendation of the governor, that the charges of the government before the settling of the revenue be defrayed,<sup>6</sup> but showed little intention to take action upon it until the fate of their own measures was assured. Cornbury, therefore, seeing that his case was hopeless,

<sup>1</sup> *Assembly Journal*, Dec. 12, 1704.

<sup>2</sup> Allinson, *Statutes of New Jersey*.

adjourned the assembly till the next spring at Burlington. His closing speech, as usual, heaped all the blame upon the refractory house.<sup>1</sup>

It was not until October, 1706, however, that the assembly actually met for its third session at Amboy.\* But, as no quorum appeared, Cornbury was obliged to adjourn the house till next day. The daily adjournment continued into November, when the governor in disgust adjourned the legislature by proclamation till the next spring. Later, by the advice of Quarry and others of the council, he dissolved the second assembly, and ordered a new election.<sup>3</sup>

If Cornbury had an expectation of obtaining a house which would be more favorable to the government, he was doomed to disappointment, for the third assembly contained an overwhelming proprietary majority. Prominent among its members were Lewis Morris, the real leader of the proprietary interests, who was under suspension as a member of the council, and Samuel Jennings, the West Jersey Quaker proprietor, who had only recently resigned from the council. These two men at once assumed a position of leadership in the house, Jennings being chosen speaker.<sup>4</sup>

Cornbury opened the session, nevertheless, with a hopeful speech. He recommended first the settling of a sufficient revenue upon the government, as the former act had now expired, and stated that the home government, out of its great consideration for the province had instructed him to accept £1,500 a year instead of the £2,000 formerly granted, but expected that the

grant would be for twenty-one years. He also again went through the form of recommending a bill confirming the rights of the proprietors and inhabitants. Cornbury then urged that measures be passed for the better care of highways, for settling the qualifications of jurymen, for levying a scale of import duties uniform with that of New York, and for reviving the now expired militia act. He advised also that the laws of the province before the surrender be examined and any acts thought still useful be revived.<sup>1</sup>

But the house at once resolved itself into a committee of the whole upon grievances.<sup>2</sup> The first act of the committee was to decide, after some debate, that it had the right to name a clerk of its own, and to choose Farmar, one of its own members, for the place.<sup>2</sup> This action was to rid the committee of Anderson, the regular clerk of the house, who was a partisan of Cornbury. The governor now believed that he had a good opportunity to interfere, and, calling the house before him, accused them of unprecedented irregularities in turning out the clerk of the house and in appointing one of the members, thus depriving him of the right of debating and voting. He warned the house to proceed directly to business.<sup>3</sup>

The assembly decided to consider this speech as a house, and formally voted that the committee of the whole had a right to its own clerk.<sup>3</sup> Next day, going into committee, it ordered Anderson to withdraw. But he refused, saying that he was bound by his oath, where-

the government. This speech was promptly voted a misdemeanor, and a scandalous reflection upon the members.<sup>1</sup> The house, however, instead of acting independently, addressed Cornbury, asking him to remove the misunderstanding by naming a new clerk, who was a resident of New Jersey, as it was a great injury that the records might be carried from the province.<sup>2</sup> Cornbury, in reply, said that he was willing to gratify the house so far as was reasonable, but wished to know what conduct of the clerk had been scandalous. A committee of the house was named to consider the reply, but Anderson, though required, still refused to withdraw. He even said that he was sworn to discover debates dangerous to the government, and that he did not know but that the committee were going to have such debates.<sup>3</sup>

Next day, however, Cornbury summoned the house, and stated that he had dismissed Anderson, and named Capt. John Pinhorne as clerk.<sup>4</sup> The house made no objection to the choice, but did not allow Pinhorne to act as clerk of the committee, retaining Farmar in that capacity.<sup>5</sup> Cornbury, though displeased, made no further active objection, and the house thus scored its first victory of the session.

The house next applied to the secretary, ex-Governor Basse, for all the laws of both divisions, but the secretary replied that he could not deliver them without Cornbury's order. He objected, also, that the order from the house was not signed by the clerk, as such orders should be.<sup>6</sup> But when the house insisted, the secretary finally sent word that they could have such papers as

they wished.<sup>1</sup> Meanwhile the house had asked Cornbury for a sergeant-at-arms, a request which the governor granted without objection.<sup>2</sup>

After these preliminary skirmishes, the house once more went into committee of the whole upon grievances, directing its attention especially to the "Blind Tax," which had been collected to dissolve the first assembly. Petitions regarding it were considered, witnesses summoned, and the sergeant was sent to compel the attendance of those who were unwilling.<sup>3</sup> Cornbury and his supporters were now in a trying position.

The house first attacked one of its own members, — Capt. John Bowne, who had been prominent in the collection of the "Blind Tax." It was ordered that he be examined as to what he did with the sum paid to him, and when he refused to take oath before the committee, he was voted in contempt and committed to the custody of the sergeant.<sup>4</sup> Meanwhile John Langstaff, one of the witnesses, had been arrested and detained in prison by the sheriff of Burlington upon the suit of Bowne. For this act Bowne was expelled from the house,<sup>5</sup> and Hugh Huddy, the sheriff, was compelled to release Langstaff, and make submission to the assembly.<sup>6</sup> The investigation was then pushed actively. Other grievances, in addition to the "Blind Tax," were also taken up and considered.<sup>7</sup>

At length a petition to the queen, a letter to Robert Harley, secretary of state, and an address to the governor, were definitely adopted and ordered to be signed by the

ment, stating briefly the circumstances relating to the "Blind Tax," complaining of the exclusion of the three members of the second assembly, and setting forth that it was impossible to obtain redress from the governor.<sup>1</sup> With it there were sent to the home government a large number of affidavits taken by the house which established beyond doubt the collection of the "Blind Tax," and made it clear that the money went to Cornbury, or at best to those near him.<sup>2</sup> Among the affidavits is one by Dr. Johnson, setting forth that, before Cornbury had published his commission, he had waited on his lordship in New York, and left upon his table £200 to encourage the chief executive to be diligent in looking after the interests of the proprietors. Although this testimony prejudices greatly the political virtue of the proprietary faction, the confession therein contained certainly adds great strength to the charges against Cornbury.

On May 8, 1707, the house waited upon the governor and presented its address of remonstrance.<sup>3</sup> This address is declared by Cornbury to have been mainly the work of Morris,<sup>4</sup> but it was read by Jennings as speaker, and he seems to have exhibited the greatest courage and self-control upon the occasion. The remonstrance itself is in some ways a remarkable document.<sup>5</sup> After expressing regret that the affairs of New York left the governor so little time to attend those of New Jersey, the address charged Cornbury with suspending the sentence of two persons charged with willful murder. It next complained that persons accused before the grand jury were

<sup>1</sup> *New Jersey Archives*, vol. iii, p. 71.

<sup>2</sup> *Ibid.* vol. iii, pp. 102-110, 274.

obliged to pay fees, even if found innocent, and urged also as a grievance that the only office for the probate of wills was kept at Burlington, and that the secretary's office was to be found only at the same place. Cornbury was next accused of granting a monopoly of trade on the road from Amboy to Burlington, and of arbitrarily establishing fees in direct contradiction to Magna Charta. He was taken to task for interfering with the proprietors, particularly for putting the records of the eastern division into the hands of Peter Sonmans, and for preventing the council of West Jersey proprietors from fulfilling its duties. The remonstrance concluded by attacking Cornbury for the exclusion of the three members and for his connection with the "Blind Tax."

Cornbury appears to have been carried away with wrath by the conduct of the assembly. He stated, however, that it would require time to prepare his answer.<sup>1</sup> On May 12 he summoned the house and read his reply.<sup>2</sup> Considering the badness of his cause, this answer is cleverly contrived, and we cannot refrain from guessing that it was not the work of his lordship himself. It is marred, nevertheless, by personal abuse of Morris, Jennings and the Quakers, whom his lordship charges with wishing to subvert all orderly government. The claims of the reply are too long to recite in detail. In general, the governor endeavored to shield himself behind his instructions. He tried to justify his right to judge of the qualifications of the three members, and denied absolutely and entirely that he had any knowledge of or share



procedure and of a desire to oppose the service of queen and country.

Meanwhile a new subject of controversy between the governor and the assembly had appeared. The house had, of course, refused to take any action upon measures recommended by Cornbury until its grievances had been redressed. On May 1st the house had asked the council to lay before it the receiver-general's accounts for the last two years, but the council refused to take any action, as no quorum was present.<sup>1</sup> In reply, the assembly refused to consider the defrayment of the charges of the government until the accounts were submitted. The point was therefore conceded and the accounts submitted.<sup>2</sup> On May 13 the house took up the matter, and summoning Fauconnier, the receiver-general, before them, called for his vouchers. Fauconnier replied that he could not give them without Cornbury's consent.<sup>3</sup> A message was therefore sent to the governor, but Cornbury replied that he had already done more than was needful in submitting the accounts. The vouchers could not be submitted legally, for the lord high treasurer had appointed an auditor general, and he, not being in the province, had deputed one to audit accounts. The receiver-general was accountable only to the lord high treasurer. Still, if the representatives were dissatisfied with any articles of the accounts, and would apply to him he would satisfy them.<sup>4</sup>

The reply of the house was to refer Cornbury's reply to further consideration, and to order bills brought in for confirming the estates of the proprietors and other

representatives' fees, and for ascertaining the qualifications of jurymen.<sup>1</sup> Cornbury, realizing at length that it was useless to struggle further, summoned the assembly before him and adjourned it until the autumn.<sup>2</sup>

The recess, however, did little to alter the situation. The session was called for October 16, 1707, but it was not until the 23d that a quorum was present and the assembly met. Cornbury, in his opening speech, expressed his anger at the tardy attendance. He then recommended the passage of the same measures which he had urged upon the previous session, with one or two additions, especially a bill for restraining refractory negroes.<sup>3</sup> But the house promptly resolved that it would grant no support until grievances were redressed. When that was done it would raise £1500 for one year.<sup>4</sup>

The house then asked Cornbury when he would receive their reply to his answer to their remonstrance. He replied that he would let them know.<sup>5</sup> The house thereupon determined to send Cornbury a copy of their reply, and further ordered it printed and published. The messengers of the house met Cornbury by the way and he consented to hear their message, "as well here as anywhere else." But when informed of their having come to deliver the "reply," the governor said, "I will not receive it; you do not proceed regularly." The house therefore could only order the entry of their reply upon the journal.<sup>6</sup> The reply is a lengthy document, showing the fallacy of Cornbury's answer to the grievances of the

<sup>1</sup> *Assembly Journal*, May 24, 1707. The last measure was to enable Quakers to serve.

<sup>2</sup> *Ibid.*, May 16, 1707.

<sup>3</sup> *Ibid.*, Oct. 23, 1707.

<sup>4</sup> *Ibid.*, Oct. 27, 1707.

<sup>5</sup> *Ibid.*, Oct. 28, 1707.

<sup>6</sup> *Ibid.*, Oct. 29, 1707.

house, and refuting his counter charges against the assembly. It is most bitter in tone, and was, of course, intended as a popular manifesto rather than to convince the governor.<sup>1</sup>

Meanwhile, after having ordered a bill for confirming the rights of the proprietors, with other useful acts, the assembly named a committee for revising the former laws of the province. But when the committee addressed the secretary for the laws, he again declared that he could not part with them without order from the governor. When sent for, he replied that his attendance was needed by the council.<sup>2</sup> Thus foiled, the house began to consider "a certain printer paper" called "Forget and Forgive," which it resolved did not reflect upon the government.<sup>3</sup> Before further action could be taken Cornbury put an end to the session.

During the recess both parties addressed themselves to the home government. Lewis Morris sent a long and able letter to the secretary of state, together with the petition, letter, and affidavits drawn up by the assembly during its first session.<sup>4</sup> On the other hand, Cornbury transmitted an address to the queen from the lieutenant-governor and council, complaining of the conduct of the assembly.<sup>5</sup>

On May 5, 1708, the assembly met for the last time at Burlington. Some delay was caused by the illness of the speaker, and Cornbury, glad apparently of an excuse to

<sup>1</sup> *New Jersey Archives*, vol. iii, p. 242.

<sup>2</sup> *Assembly Journal*, Oct. 31, 1707.

<sup>3</sup> *Ibid.* For composing and publishing this so-called libel, George Willcocks, John Pike and John Barclay were accused and upon informa-

be rid of Jennings, ordered the choice of a new one. The house thereupon selected Thomas Gordon, who had made himself almost equally obnoxious.<sup>1</sup> Cornbury, however, felt obliged to approve the choice. His opening speech was a mere reproduction of what he had said at the beginning of the earlier sessions, urging the support of the government for twenty-one years, the revival of the militia act, and other measures which he had formerly advised.<sup>1</sup>

The house, after due consideration, prepared a reply to the speech, which they delivered on May 12th.<sup>2</sup> While they were sorry for the misunderstanding which had arisen, they maintained that most of the grievances which they had set forth at their first meeting still existed. They now complained further that persons were prosecuted upon informations, which rendered grand juries useless and gave the attorney-general power to increase his own fortune at the expense of the country. They further complained of the great charges due to bringing juries and evidences from great distances to the supreme courts at Burlington and Amboy, also that lawyers who defended persons prosecuted upon informations were intimidated from doing their duty by the fear of being suspended. Lastly, they asserted that the clerk of the Crown had refused to issue a writ for the election of a member wanting to the house.

The assembly hoped that the governor, by removing these and other grievances, would enable them to do their utmost to support the government. but they were

it was a great grievance, though they were very ready to provide for the defense of the country. They had already prepared a bill confirming the rights of the proprietors and other purchasers, but had not been allowed to perfect it. In revising the laws of the province they had been impeded by Secretary Basse, who had refused to let them see the laws. The house concluded by expressing its determination to do its utmost in serving the queen and advancing the interests of the country.

The firm stand of the assembly was sufficient to convince Cornbury that he had nothing to gain from continuing the session. Immediately after the delivery of the answer, he adjourned the assembly until September.<sup>1</sup> Before that time, however, Cornbury had been removed, and Lord Lovelace, a man of entirely different disposition and views, had been appointed in his place. The struggle between executive and legislative was not yet to end, but the popular body had nevertheless so far gained a victory by its obstinate stand against the high-handed course of Cornbury.

When the fourth assembly began its first session at Amboy March 3, 1708, it quickly displayed its confidence in the new governor as well as its desire to bring to an account the advisers of the hated Cornbury. After the selection of Thomas Gordon as speaker,<sup>2</sup> Lovelace opened the session by a mild speech stating that he would give the province no cause for uneasiness, and recommending the measures for the support of the government and the establishment of the militia which he believed needful to the ease of the people.<sup>3</sup> The house

<sup>1</sup> *New Jersey Archives*, vol. iii, pp. 207-208.

replied, expressing their confidence in Lovelace and their gratitude to the queen for "putting an end to the worst administration New Jersey ever knew." They would willingly contribute to the government and the governor's reasonable desires should be their command.<sup>1</sup>

Nor did the assembly let their promises remain unfulfilled. They at once proceeded to work upon various measures of which the province was greatly in need, owing to the virtual absence of legislation under Cornbury. A bill granting £1,722, 10s, 4d for one year for the support of the government, a measure re-establishing the militia, though with far less severe penalties attached, and a number of other important acts were soon carried through.<sup>2</sup>

Meanwhile, however, the enemies of the party now in control of the house were not left in peace. The attack was begun by an address to Lovelace asking for a copy of the address which had been sent to the Crown by Ingoldsby and eight members of the council in 1707 containing a violent denunciation of the conduct of the house and casting the responsibility upon Morris and Jennings.<sup>3</sup> Lovelace at once gave the assembly a copy of the paper,<sup>4</sup> and the house after some discussion once more addressed the governor asking that the council should appear before the governor to make good their charges and that the house might be present.<sup>5</sup> A week later the assembly again communicated with Lovelace, asking what action would be taken.<sup>6</sup> But meanwhile, Ingoldsby, Townley,

<sup>1</sup> *New Jersey Archives*, vol. iii, p. 362.

<sup>2</sup> Allinson, *Statutes of New Jersey; Assembly Journal*.

<sup>3</sup> *New Jersey Archives*, vol. iii, p. 364.

<sup>4</sup> *Assembly Journal*, March 9, 1708.

<sup>5</sup> *New Jersey Archives*, vol. iii, p. 367.

<sup>6</sup> *Assembly Journal*, March 22, 1708.

Quary, Coxe, Pinhorne, and Sanford had applied to the governor, asking for time in which to collect suitable proof of their charges.<sup>1</sup> Lovelace therefore assured the assembly that the council should answer in a day or two.<sup>2</sup> The learned Chief Justice Mompesson, evidently fearing the result, had separated himself from the rest of the signers by saying that he had put his name to the address without examining its particulars, as it was customary in similar bodies for all to sign such papers, even if they dissented in opinion.<sup>3</sup>

The house, meanwhile, prepared an address to the Crown to off-set that of Ingoldsby and his allies in which they denied and refuted the charges of the council and begged the queen not to be misled.<sup>4</sup> At length, in April, Ingoldsby and his supporters, who were now again joined by Mompesson, presented to Lovelace a lengthy justification of their conduct.<sup>5</sup> It went over all the old grounds of quarrel between Cornbury and the house, but was violent in tone and marred by personal bitterness. Owing to the dissolution of the assembly, no reply from the house was received, and the question did not come to an issue.

While this quarrel was going on the house had also made a violent attack upon its old enemy, Peter Sonmans, a member of the council, for arbitrary conduct in practically preventing the persons summoned upon the grand jury of Middlesex from serving and then fining them for non-attendance.<sup>6</sup> To this charge they coupled others of

<sup>1</sup> *New Jersey Archives*, vol. iii, p. 372.

<sup>2</sup> *Assembly Journal*, March 23, 1708.

<sup>3</sup> *New Jersey Archives*, vol. iii, p. 373.

<sup>4</sup> *Ibid.*, vol. iii, p. 385.

<sup>5</sup> *Ibid.*, vol. iii, p. 390.

<sup>6</sup> *Assembly Journal*, March 18, 1708.

perjury, adultery, and other crimes.<sup>1</sup> But Sonmans managed to defend himself at such length that no immediate result was gained.<sup>2</sup>

The house, however, gained an important advantage in another field. It had not forgotten the conduct of Receiver-General Fauconnier, and on March 12th it summoned him once more to submit the vouchers of his accounts of the last revenue.<sup>3</sup> As this summons had no effect, the house ten days later drew up an address to Lovelace, asking him to command Fauconnier, the "receiver-general of the last revenue" who was then "in the province of New York under your lordship's administration" to attend the house with his vouchers and if he neglected or refused, to order his securities' bonds to be put in suit.<sup>4</sup> Lovelace replied to the address that he would send for Fauconnier as soon as he knew where he was.<sup>4</sup> Directly afterward the house came to a conclusion upon the bill for support previously mentioned. But it desired that Lovelace would nominate a treasurer for the ensuing year who should be approved by the house and should be a resident of New Jersey.<sup>5</sup> The governor took a day to consider this request and then named Miles Forster "receiver-general" for the ensuing year. The house promptly voted that he be allowed "treasurer" on giving due security.<sup>6</sup>

Thus through the session the house had made good progress in its power, and if Lovelace had lived the overthrow of Cornbury's supporters would have been assured. Before the assembly met again, however, Lovelace was in

<sup>1</sup> *New Jersey Archives*, vol. iii, p. 274.



his grave and Richard Ingoldsby, the lieutenant-governor, had stepped into his place. The conflict was now sure to reopen. But fortune favored Ingoldsby, for just as he took office, Colonels Nicholson and Vetch appeared, intrusted by the Crown with the raising of forces for their expedition against Canada. New Jersey's quota was set at two hundred men.<sup>1</sup> Ingoldsby, therefore, had the opportunity of appearing in a patriotic role and could hope by clever management to make any objections to his course offered by the assembly appear in the worst light.

He at once called the legislature by proclamation, March 25, 1709, and explained "the extra ordinary service" that was required.<sup>2</sup> The assembly immediately called into question Ingoldsby's right to the government and ordered that the secretary attend with the record of commissions. This occasioned delay, as Basse replied that he did not have the records in town. But after a little further wrangling he satisfied the house by laying before it a copy of Ingoldsby's commission.<sup>3</sup>

The assembly then proceeded to consider the equipment of the quota for the expedition, working in consultation with a conference committee from the council and with Nicholson and Vetch.<sup>4</sup> But from the beginning no eagerness was shown. Not only was the distrust of the executive apparent, but the Quakers were in conscience bound to oppose any military measures, although the sequel seems to show that they did not wish now to incur the blame for the failure of the required bills.

First, reasons were presented why New Jersey's quota

house took up the question as to whether "men be detached," that is, whether militia be sent by the province. The vote at first stood even. But upon the second vote the motion was squarely defeated.<sup>1</sup> New Jersey, therefore, would support the expedition only by voluntary enlistments. The house, however, in committee of the whole decided to raise £3,000 for the support of their troops, and proceeded to elaborate a bill for the purpose.<sup>2</sup>

But Ingoldsby and his council would not let the chance slip of involving the Quakers in difficulty, nor was the house inclined to pass any opportunity of attacking the lieutenant-governor. The council proceeded to pass and send down an address of thanks to the Crown<sup>3</sup> and a little later another praying Nicholson to take command of the forces raised.<sup>4</sup> The latter was promptly accepted by the house, though with the proviso that it should be understood as applying only to those who voluntarily enlisted, and sent back to the council signed by the speaker.<sup>5</sup> But the council, seeing its advantage, returned it with the request that all the representatives subscribe it, as was done in other colonies. Such members of the house "as pleased" then signed.<sup>5</sup> In similar manner the house agreed to the address to the Crown and sent it up signed by the speaker.<sup>6</sup> But the council again took exception to this mode which allowed the Quakers to escape responsibility, and sent back a new copy of the address.<sup>3</sup> The house, thereupon, drew up an address of its own to the queen which it ordered signed by the

self and the other Friends boldly accepted the challenge and caused entry to be made that, though the Quakers were always willing to support the government, they were in conscience bound to oppose raising money for soldiers.<sup>1</sup> Meanwhile the assembly passed a bill to prevent prosecutions by information.<sup>2</sup> It also undertook to amend the militia act.<sup>3</sup> On the other hand, the house rejected point-blank a bill sent down by the council for preventing persons from leaving the province to escape service on the expedition.<sup>4</sup> The council replied by rejecting the bill preventing informations.<sup>5</sup>

On June 10, 1709, the bill for raising £3,000 for the expedition came to its final consideration in the assembly. In spite of the formal opposition of the Quakers its passage was assured. But it certainly appears that in spite of their feigned eagerness the supporters of the lieutenant-governor were really disappointed that they could not make profit by casting upon the Friends the blame for the failure of the measure. They endeavored to gain their end by a ruse. Elisha Lawrence and Gershom Mott of Monmouth, both of whom, as being opposed to the proprietary interests, were supporters of Ingoldsby, and had voted all along for the bill, now suddenly cast their votes against it upon the final question. These two negatives, with the votes of the Quakers, made a majority against it, and it was thus defeated to the dismay of all.<sup>6</sup>

The council at once named a committee to examine

<sup>1</sup> *Assembly Journal*, June 10, 1709.

<sup>2</sup> *Ibid.*, June 7, 1709.

<sup>3</sup> *Ibid.*, June 4, 1709.

<sup>4</sup> *Ibid.*, June 3, 1709.

the books of the house with a view to finding evidences of guilt.<sup>1</sup> But the assembly promptly answered the attack by naming a committee to inspect the council journal.<sup>2</sup> This step confused the council. They made answer that the house had made no mention of the lieutenant-governor without whom they could not act. Further they presumed that the deliberations of the council were secret. Still, if proper applications were made, they would show all minutes referring to the house.<sup>3</sup> The house replied that they conceived that such minutes were kept in a separate book and prayed that they might examine such records.<sup>4</sup> But though a time was set for the examination, the clerk of the council did not appear with his minutes,<sup>4</sup> and further action was prevented by the adjournment. Meanwhile, the council committee had gone through the journal of the house and carefully copied such entries as they believed would serve their designs.<sup>5</sup>

✓ Ingoldsby called the representatives before him on June 13th and adjourned the assembly until July 28th. He had expected ready compliance, but instead they had trifled away their time and done nothing.<sup>6</sup> Immediately after the adjournment the lieutenant-governor and his confederates drew up an address to the queen, violently attacking the Quakers and heaping upon them the blame for the failure of the province to comply with the Crown's commands. The only remedy was to exclude them from office.<sup>7</sup>

<sup>1</sup> *New Jersey Archives*, vol. xiii, p. 360.

<sup>2</sup> *Assembly Journal*, June 11, 1709.

<sup>3</sup> *New Jersey Archives*, vol. xiii, p. 361.

<sup>4</sup> *Assembly Journal*, June 13, 1709.

<sup>5</sup> *New Jersey Archives*, vol. xiii, p. 362.

<sup>6</sup> *Ibid.*, vol. xiii, p. 363.

<sup>7</sup> *Ibid.*, vol. xiii, p. 365.

But the further prosecution of the schemes of the anti-proprietary faction were foiled by Nicholson and Vetch, who were unwilling to see their expedition crippled to gratify party ends. Apparently assurance was given them that the assembly would pass the required act. At any rate, upon the solicitation of the officers, Ingoldsby summoned the legislature by proclamation, and it met again June 23d.

With the utmost promptness the house passed a bill for raising £3,000,<sup>1</sup> another to encourage volunteers,<sup>2</sup> and a third for enforcing the currency of £3,000 in bills of credit.<sup>3</sup> The first of these appears to have had a narrow escape, however, from the fate which it met the previous session, being carried, after a tie vote, by the ballot of Hugh Middleton, "one reputed a Quaker," who saw how affairs stood, and was unwilling to be made a political tool because of his religious belief.<sup>3</sup>

The council speedily passed unchanged the bill to encourage volunteers.<sup>4</sup> The other two acts, however, it insisted upon amending. Some of these amendments were readily accepted by the house, but upon one point a direct conflict ensued.<sup>1</sup> In the acts sent up the words "general assembly" were used referring to the house alone. The council claimed that they should apply only to the governor, council and assembly acting together, and based their contention upon the governor's commission and instructions, as well as upon former practice.<sup>5</sup> But the house held resolutely to its position, and gave the council plainly to understand that it must either yield the point or incur the responsibility for the failure of the

measures. This the council was unwilling to assume and it accordingly gave way, though with very bad grace.<sup>1</sup> The three bills were thus passed and assented to by Ingoldsby, after which the assembly was adjourned. The house had won a substantial victory, and the plans of the lieutenant-governor had been sharply checked.

During the session thus ended there had been several other points of conflict between the executive and legislative. Owing to the shortness of the proceedings, however, these had come to no direct issue. The session had hardly opened when Lawrence and Mott requested that as a justification they be allowed to enter upon the journal of the house their reasons for voting against the bill for raising £3,000. The request was refused,<sup>2</sup> whereupon they applied to the council and were allowed to state their reasons upon the council journal. Here they protest against the entry upon the journal of the house, of the fact that they had voted against the measure, as unprecedented, and state that they did so, not because they were unwilling to obey the queen's orders, but because they thought that many parts of the bill were ill advised, as, for example, that which made the quota consist entirely of volunteers and did not provide for a detachment in case the number fell short. They thus tried to make it appear that the measure was not strict enough to suit them.<sup>3</sup>

Meanwhile the house had called Secretary Basse before it and asked whether Miles Forster had given security as treasurer for the last tax. Basse replied that he did not know and that he regarded it only as his business to file

the bond when it was sent him. The house thereupon named a committee to see that Forster gave bond.<sup>1</sup> Next the assembly named a committee to inquire what had been done with two bills sent up last session, that regarding informations and a measure concerning the payment of old debts.<sup>2</sup> The latter bill was considered and finally passed by the council, but with amendment which the house would not accept.<sup>3</sup> Adjournment, however, prevented further discussion. Some consideration was also given by the house to a petition from one Peter Blacksfield, praying relief from a judgment against him for a supposed breach of his recognizance. But this matter was soon postponed till next session.<sup>3</sup> The urgency of the occasion, therefore, prevented for the time being the wrangle and conflict which under the existing state of feeling was likely to come between Ingoldsby and his opponents. When the assembly met again in November, 1709, at Burlington, however, the field was clear.

This was a new assembly, for another election had been held during the interval, and the result undoubtedly changed the feelings of the house toward the executive. The majority of the fifth assembly were by no means zealous in the interest of the proprietors, and, though ready to oppose the council in defence of their rights as a house, passed several measures in the interest of Ingoldsby and Coxe. An important part of the work of the session was the passage, after much discussion, of an

<sup>1</sup> *Assembly Journal*, June 26, 1709.

<sup>2</sup> *Ibid.*, June 29, 1709.

<sup>3</sup> *Ibid.*, June 28 and 29, 1709. Blacksfield had given security for the appearance of William Slooby, of Salem Co., who had been held for

act for explaining the act of support which had been passed under Lovelace.<sup>1</sup> This measure, regarded by Hunter as infamous, gave £600 of the £800 granted Lovelace to Ingoldsby, leaving only £200 to Lady Lovelace.<sup>2</sup>

But none the less grounds of disagreement were not lacking. The house prepared two bills confirming the rights of the proprietors of East and West Jersey respectively. But the latter was defeated in the council without being committed,<sup>3</sup> and the former met an even more untimely fate. The house committee to which it was intrusted contained an anti-proprietary majority including Lawrence and Mott. This committee deliberately blotted out the entire bill except the title, even using force against its chairman, Thomas Gordon, who, of course, objected.<sup>4</sup> For this conduct Lawrence and Mott were forced to ask forgiveness at the bar of the house. Nevertheless it was voted not to bring in another similar bill that session.<sup>5</sup> The Blacksfield petition was also investigated by the assembly, and as a result a bill was passed annulling the decision and judgment of the case. This bill, however, was immediately rejected by the council.<sup>6</sup>

The curious conflict about the title "general assembly" was renewed. In spite of the precedent of the fourth assembly the council amended bills sent to it by striking out the word "general" when referring to the

<sup>1</sup> *Assembly Journal*, Dec. 14, 1709 *et seq.*

<sup>2</sup> *New Jersey Archives*, vol. iii, pp. 57-8.

<sup>3</sup> *Ibid.*, vol. xiii, p. 400.

<sup>4</sup> *Assembly Journal*, Jan. 2, 1709-10.

<sup>5</sup> *Ibid.*, Jan. 3, 1709-10.



house alone.<sup>1</sup> But when the house made an issue of the matter, the council was obliged to recede.<sup>2</sup> Thus the point gained by the last house was not lost.

Another disagreement took place upon a bill regulating court fees, in which the council undertook among other changes to raise the fees which had been agreed upon in the house.<sup>3</sup> After conference no agreement could be reached, and the bill was lost.<sup>4</sup> There were also disagreements upon other measures, notably upon that preventing prosecutions upon informations and that for regulating representatives' fees, but the latter bill was finally passed.

The most important work of the session, however, was the investigation of the expedition to Canada and of the questions arising out of the issue of bills of credit which it had entailed. This was carried on by the committee of the whole house, assisted by a committee of the council named by Ingoldsby.<sup>5</sup> Thomas Pike, Capt. Farmar, John Royse and Elisha Parker, or any three of them, had been appointed to sign the bills of credit. But Royse had died before any were issued. The three remaining commissioners had then, without authority, associated Adam Hude with themselves to sign the bills. Hude had signed some of the bills with his three colleagues, but more with only two. There was also some difference between the form of the bills issued and that which had been required by the act.<sup>6</sup>

<sup>1</sup> *New Jersey Archives*. vol. xiii, p. 406; *Assembly Journal*, Jan. 16 and 17, 1709-10.

<sup>2</sup> *Ibid* Jan. 21, 1709-10.

To remedy these defects, John Harrison brought a bill in the house for amending and explaining the act for the currency of the bills of credit.<sup>1</sup> After some change it was passed by the assembly.<sup>2</sup> But the council instead of passing it took the opportunity of attacking the persons concerned in the Canada expedition who were adherents of "the country party." After receiving the report of the select committee which had investigated the expedition with the committee of the house, it passed a series of resolutions.<sup>3</sup> These declared that Pike, Parker, Farmar and Hude had all acted criminally. All bills signed only by Hude and two persons were declared void, and the conduct of the signers an encouragement to counterfeiting. Farmar and Parker, the commissioners for managing the expedition, were also declared to have betrayed their trust, as had John Harrison, the commissary. Basse, who with Gordon had gone over the accounts, was publicly thanked.

Meanwhile the house had passed a bill for punishing deserters during the late expedition. Sonmans in the council promptly moved that it be amended so as to compel Farmar, Parker, Hude and Harrison to restore the moneys of which they had cheated the province.<sup>4</sup> But no action in this matter was pushed home, owing to the opposition of the house. Soon after the council received a delegation of merchants including Peter Fauconnier, who represented the trouble and loss caused by the fact that the bills of credit had not been properly signed, a fact which had caused them to lose credit.

any more of them.<sup>1</sup> The council, however, had already sent down an act for calling in and declaring void the old bills and enforcing the currency of new,<sup>2</sup> but the house threw this out absolutely.<sup>3</sup>

The council now at length took up the house bill, amending that for the issue of the original bills of credit and passed it with amendments.<sup>4</sup> The delegation of merchants had meanwhile addressed themselves to the house, and in a memorial prayed that the house would not confirm the present bills of credit, but that they might be heard on the same.<sup>5</sup> Another petition was also presented from Trent, Glennecross, Wilson and other traders of New York and Philadelphia desiring to be heard against the bill enforcing the currency of the money lately issued. A hearing was promptly given to the latter parties.<sup>6</sup> The house then accepted the council changes in the bill for amending the act for the currency of the bills of credit.<sup>6</sup> But the session came to an end without its receiving the assent of the governor.

Meanwhile the house had ordered the secretary to lay before it all papers and acts connected with the Canada expedition, and had been informed by Basse that the documents were under consideration by the council.<sup>7</sup> But Ingoldsby, secure in having his own needs provided for, now decided to end the session, already the longest yet held, by an adjournment till March 17th.<sup>8</sup>

When the legislature met again it found a new policy to be dealt with and a new executive behind it, in the

<sup>1</sup> *New Jersey Archives*, vol. xiii, p. 421.

<sup>2</sup> *Ibid.*, vol. iii, p. 420.

<sup>3</sup> *Assembly Journal*. Jan. 26, 1709-10.

person of Governor Robert Hunter, the ablest statesman whom the colonial history of New Jersey presents. Governor Hunter opened the first session of the sixth assembly by a businesslike statement in which he simply said that as long as the unhappy divisions of the province continued there was little hope of successful work. He therefore urged that they leave disputes of property to the laws, and join in agreement like good subjects. All owned the need of supporting the government. Several other matters needing attention he would bring forward directly. In addition he would concur in all that was advantageous.<sup>1</sup> A little later he laid before the house several articles of his instructions requiring legislation, as well as a letter from the Queen in favor of Lady Lovelace.<sup>2</sup> As for the rest Hunter kept himself carefully in the background and waited the result of the deliberations, meanwhile following keenly the conduct of both council and assembly.

The house after replying courteously<sup>3</sup> proceeded to work in good spirit. It recalled from the council the engrossed bills which had been sent up during the recent sessions<sup>4</sup> and not passed, and after reconsideration, sent a number of them up again. Among these were the bill for preventing prosecutions by information,<sup>5</sup> and the bill for the amending the act for the currency of £3,000 bills of credit<sup>6</sup> which had so nearly become law at the last meeting. The house then went on to

<sup>1</sup> *New Jersey Archives*, vol. xiii, p. 126.

further legislation, in part at least upon lines suggested by the governor. In all it elaborated nineteen measures, nearly all of which were regarded by Hunter as proper and useful.<sup>1</sup> They included a bill for regulating elections, which was directly required by Hunter's instructions, a bill relieving those injured by the militia act, and a bill regulating the qualifications of jurors which would have enabled Quakers to serve. The house, however, regarded it as useless to attempt a bill confirming the rights of the proprietors until the membership of the council was changed. The bill appropriating £944 for the support of the government for two years was prepared in a new and businesslike manner, creditable both to the assembly and to Hunter. Upon taking up the question, the house asked the governor what he would regard as a reasonable support for one year.<sup>2</sup> In reply Hunter submitted an account of the charges of the government,<sup>3</sup> and the bill appears to have been framed on the information given. It was satisfactory to Hunter for the time being, though he advised the Board of Trade that he hoped in due time to secure a more proper sum.<sup>4</sup>

But far different was the conduct of the council, controlled as it was by the old supporters of Cornbury and Ingoldsby,—Pinhorne, Coxe, William Hall, and the meddlesome Sonmans. These men soon made it apparent that their aim was to thwart the assembly and to cause all the trouble possible to the supporters of the proprietors and the Quakers. They proceeded to reject all the bills except five, chiefly upon hasty and insufficient pretexts which left bare their real motive. Most of the

bills were simply rejected upon second reading, but when the subject matter was so important that the bills had to be committed, they were so clogged with amendments that certain defeat followed.<sup>1</sup> The result, of course, was the failure of all the objects of the session. Even the tactful remonstrance of Hunter could not dissuade the council from its course.<sup>2</sup> Only three of the many important bills were saved: the act of support, the act amending the act for the currency of the bills of credit, and the act reviving the militia act.<sup>3</sup> These even Coxe and Sonmans dared not defeat.

While this conflict was taking place, several other collisions between the houses occurred. After several bills had been sent up by the house to the council the former body named a committee to inspect the council minutes to see what action had been taken. They were to get a copy of the minutes signed by the clerk and lay it before the house.<sup>4</sup> But the clerk of the council refused to show the minutes or to give a copy without order from the council.<sup>5</sup> The house then addressed Hunter relative to the refusal, and the governor at once directed Basse to lay before the house copies of the minutes.<sup>6</sup> Hunter further ordered that in future the minutes of the council relative to the passing of bills should be kept in a separate book to which the house might have recourse at any time. But as to former minutes the house must apply to the governor as they were intermixed with other matters.<sup>7</sup>

This substantial victory as well as the substitution by Hunter of William Bradford for Capt. Pinhorne as clerk of the assembly encouraged the representatives.<sup>1</sup> They now asked Hunter for a "perusal" of the council minutes relative to the Canada expedition and also for a copy of the address to the Crown sent by the council in Ingoldsby's time.<sup>2</sup> As to the latter, however, the secretary reported that though he had been ordered to show minutes regarding bills, the council would not consent that the address be shown.<sup>3</sup> As to the records of the Canada expedition, Basse stated that he could not deliver certain of the papers without direct orders of the council to that effect.<sup>4</sup> The house, however, might have copies.<sup>5</sup> The house, therefore, resolved that the secretary's action had disabled it from proceeding upon the country's business and proceeded to address the governor against Basse.<sup>6</sup> The address declared that the house believed that Basse falsified when he said he had orders from the council not to show the documents, and that it was intolerable that the representative body should be insulted by one whose crimes and misdemeanors deserved public censure.

A few days later a message was received from the council through Basse in person in which it was desired that the house particularize as to which papers relating to the Canada expedition they wished to examine. The house after inspecting its journal replied that they desired to see all the papers which had originally been laid before the committee of the two houses and which, when they had applied to Ingoldsby in January, 1710, he had

<sup>1</sup> *Assembly Journal*, Jan. 1. 1710-11.

informed them were then under consideration before the council. This answer was conveyed to the council by a committee which further informed that body that the right of the house to all the papers was indisputable.<sup>1</sup> Soon after the house was informed that the council had named Coxe and Gordon as a committee to examine which of the papers need be copied. These copies were to be for the use of the council and the originals would be laid before the house in a few hours.<sup>2</sup> Next day Basse handed over the documents.<sup>3</sup> He refused, however, to let the house see the reasons entered by Lawrence and Mott upon the council journal for their voting against the appropriation of the moneys for the expedition.<sup>4</sup> But the house as usual applied to Hunter who promptly sent them a copy of the entry.<sup>5</sup> The representatives upon consideration of their conduct censured Lawrence and Mott, and when the latter after some hesitation refused to admit his fault, he was expelled.<sup>6</sup>

Meanwhile the house had obtained from Capt. Pinhorne, its former clerk, a copy of the address sent by Ingoldsby and the council to the Crown in Cornbury's time which had been furnished by Lord Lovelace. After examining this worthy document the assembly voted to address the Queen in defense of itself and former assemblies;<sup>7</sup> it declared all signers of the scandalous paper unworthy to be members of the house, and forthwith expelled William Sandford, a former councilor, then serving as member from Bergen.<sup>8</sup> When Sandford and



Mott were re-elected they were declared incapable of sitting. In a lengthy and able representation to the governor the assembly not only answered the charges made in the council's address, but thoroughly exposed the abuses of the recent administrations. This document undoubtedly made a great impression upon Hunter.<sup>1</sup>

Meanwhile the house had obtained from Hunter a sight of the bond of the former receiver-general, Fauconnier,<sup>2</sup> and a committee examined his accounts.<sup>3</sup> These were discovered to be faulty in several respects, and the governor was addressed for relief.<sup>4</sup>

During the latter part of the session the house was occupied in investigating charges brought against William Hall and Basse for improper use of their powers, especially during certain recent court proceedings. Hall was accused of abusing his power as justice at Salem by illegally imprisoning and coercing one Gotbolt and his wife. Basse was charged with numerous misdemeanors, especially in the proceedings against Thomas Gordon during Cornbury's time. The attack upon the secretary was based partly upon charges brought in the assembly by George Willocks, the old foe of the clique to which Basse belonged. Sonmans and Pinhorne were also involved. The assembly finally presented addresses against both the secretary<sup>5</sup> and Hall.<sup>6</sup> When at length Hunter, on Feb. 10, 1710-11, adjourned the assembly, the feeling between the two houses had become so bitter

<sup>1</sup> *New Jersey Archives*, vol. iv, p. 24 *et seq.*

<sup>2</sup> *Assembly Journal*, Jan. 8, 1710-11.

that hot words and personalities were uttered even during conferences.<sup>1</sup>

But although the first session of the sixth assembly thus ended in disagreement and failure, it brought with it most important results. Hunter now saw exactly where the difficulty lay. He recognized the impossibility of carrying on legislation successfully with hostile majorities in the two houses of legislature, and he was convinced that the proprietary party in control of the lower house represented the true sentiments of the province.<sup>1</sup> Upon this opinion he based his future course. That he, a shrewd and upright outsider, should come to such a conclusion is one of the strongest arguments in favor of the "Country Party." Whatever our sympathy for the original settlers of Elizabethtown, it seems certain that Sonmans, Hall, Pinhorne, and their followers now constituted a corrupt clique of office holders. The argument that Hunter as a Scotchman was naturally favorable to his fellow Scots, the leading proprietors, is counterbalanced by the fact that the leaders of the council made great parade of churchmanship while among their opponents were many dissenters and Quakers. Hunter though tolerant was himself a good churchman.

Immediately upon the close of the session Hunter wrote fully to the Lords of Trade stating exactly what had occurred and casting all the blame upon the council. He declared that nothing could be accomplished while Pinhorne, Sonmans, Coxé and Hall held their positions

on the governor undoubtedly had a full understanding with Morris and the assembly leaders, for they acquiesced in his policy of making no further efforts at serious legislation until the cumbersome machinery across the water should bring about the required changes. If it had not been for the circumstances of the war with France, which it must be remembered was all this time going on, it is probable that Hunter would not even have summoned another session of the assembly until this had been accomplished.

As it was, however, a brief session was held at Perth Amboy in July 1711 for the purpose of providing New Jersey's quota for the Walker expedition.<sup>1</sup> The session was harmonious as the council dared not seem to oppose the wishes of the Crown, and the assembly acted with dispatch. There was no attempt at general legislation and immediately upon the passage of bills for the raising of 12,500 ounces of plate in the form of bills of credit and for encouraging volunteers to go upon the expedition to Canada, Hunter adjourned the assembly.\*

A further interval followed during which Hunter again applied to the home government urging action,<sup>3</sup> and at length his advice, supported by the efforts of the West Jersey Society,<sup>4</sup> prevailed. On August 27, 1712, the Lords of Trade recommended to the Queen that Pinhorne, Coxe, Sonmans, and Hall be removed from the council and Anderson, William Morris, John Hamilton, and Reading be named in their places. Elisha Parker and Thomas Byerly were recommended for vacancies. All of these appointments were duly approved by Queen

Anne in June 1713 except that of William Morris, who had died.<sup>1</sup> But this victory was not won without opposition as William Dockwra, the old ally of Sonmans and Coxe, and certain of the Anglican clergy in the province had used every effort to prevent it.<sup>2</sup>

Hunter was now secure in the support and sympathy of a majority in both houses, and on Dec. 8, 1713, once more met the assembly at Burlington. The session began with every indication of harmony and satisfaction. Hunter in his speech expressed his pleasure at meeting the assembly again and said he believed they would be glad to see him "in such good company." He congratulated them on the peace which the Queen had given them and thought that, as the majority of the council now held views in agreement with their own, it would be well for the houses to hold frequent conferences. As to matters of legislation he reminded them of the necessity of supporting the government. He thought the time had come to confirm the rights of the proprietors and to reconsider some of the recent bills which the council had spoiled. Several other matters of local concern were also suggested.<sup>3</sup> The assembly replied in an equally pleasant spirit.<sup>4</sup> They congratulated Hunter on being in such good company, expressed their obligation to the Queen, and hoped they would show that they were not ungrateful.

The session thus begun fulfilled in every respect its early promise. From December 8th to March 17th, the houses remained steadily at work and carried to com-

important subjects. During all the work the council and assembly coöperated heartily. Numerous conferences were held to the satisfaction of both bodies, and though there were some few differences of opinion, no conflict whatever took place. The statesmanship of Hunter had accomplished its result.

Though numerous of the measures passed were of account, a discussion of the strictly legislative work of the session does not belong under our present topic. Most of the acts will be considered elsewhere. It is to be noted here, however, that the victorious party carried through triumphantly many of the bills which had been subjects of conflict between the assembly and the late majority in the council. Among these were a bill for preventing malicious informations, a bill for the Quakers, giving validity to their declarations, and thus enabling them to hold all offices of trust, and a bill for preventing corruption of the courts.<sup>1</sup> It is interesting to notice that though a bill for confirming the rights of the proprietors of West Jersey was considered,<sup>2</sup> it was not passed in time for acceptance by the governor.

The house exercised and thus confirmed its right to inspect the accounts of all the provincial officers. Not only were the accounts of Thomas Gordon, receiver-general and "treasurer" of the province, considered,<sup>3</sup> but also the accounts of the treasurers of the recent expeditions against Canada, Gordon for East Jersey, and Thomas Gardiner and Dr. John Robert for the western division.<sup>4</sup> The assembly also appointed committees to

<sup>1</sup> *Assembly Journal*, March 11, 1713-14.      <sup>2</sup> *Ibid.*, Feb. 19, 1713-4.

<sup>3</sup> *New Jersey Archives*, vol. iv, p. 185; *Assembly Journal*, Jan. 23, 1713-4.

<sup>4</sup> *Ibid.*, Jan. 22, 23, Feb. 6, 1713-14; *liber AAA of Commissions*, pp. 134, 147.

examine the statements of the collectors of the taxes for the recent Canada expedition in the several counties.<sup>1</sup>

The matter of the support of the government and the payment of the arrears since the last act was adjusted without dispute. Gordon's accounts showed that he had in hand £1,162 10s. 3d., and this sum was appropriated to pay the arrearages from June 1712, to Sept. 1713. Hunter was to have £500 a year salary and £100 for expenses.<sup>2</sup> An additional act of support gave £2,550 for the payment of expenses for two years.<sup>3</sup> These bills though approved without comment by Hunter were regarded by him as being too small in amount.

Throughout the session Hunter kept himself in the background and made no effort to interfere in the deliberations. The journal of the representatives scarcely mentions him except when he formally accepts the measures at the end of the session.

But the victory of Hunter and the proprietary party was not a final one. The death of the Queen and the accession of George I put an end to the sixth assembly which had served so well the purposes of the governor, while it made it necessary for Hunter, himself, to obtain a new commission. Dr. Daniel Coxe, the former proprietor of West Jersey endeavored in the interests of his son to prevent his reappointment<sup>4</sup> and in attacking Hunter he was joined by the resentful Cornbury, now Earl of Clarendon.<sup>5</sup> The effort to overthrow Hunter in England failed, however, as a new commission was promptly given.<sup>6</sup> The issue of this patent put an end to

Meanwhile the elements of opposition in New Jersey itself were being reorganized. The leaders were now more especially Col. Coxe and Basse, who had been superseded as provincial secretary by James Smith.<sup>1</sup> But they found allies in the Rev. Mr. Talbot and other high churchmen who regarded Hunter's removal of Coxe and his fellow council members as an attack upon Anglicanism in the interest of Quakers and dissenters. The strength of the opposition lay in the western division, in Salem, Gloucester, and Cape May, a fact rather remarkable as East Jersey had always been the center of anti-proprietary feeling.

When the new elections were held, Coxe and his supporters were successful to such an extent that Hunter evidently feared being confronted by a hostile assembly.<sup>2</sup> He called a session for December, 1715, at Burlington, but the representatives were slow in appearing, and Hunter after consultation with his council declared the assembly dissolved before it had actually organized, and ordered a new election. The reason assigned was that several of the members chosen were "notorious persons."<sup>3</sup> But the result was hardly more satisfactory to the executive as Coxe and William Hall were again returned and controlled a majority of the lower house.

Hunter at length summoned the assembly at Amboy on April 4, 1716, and the house at once chose Coxe speaker, an act in itself a declaration of war.<sup>4</sup> The governor's opening speech was certainly not calculated to pacify his opponents.<sup>5</sup> He said that the delay in calling

<sup>1</sup> *New Jersey Assembly*, vol. xiv, p. 2.

<sup>2</sup> *Ibid.*, vol. iv, p. 210.

<sup>3</sup> *New Jersey Archives*, vol. xiv, pp. 1-6.

the assembly was due to the recent long session at New York and his necessary presence on the frontier. Despite the insinuations of two persons at home who pretended to have been instructed from this side, he defied the most malicious to name an instance where he had not acted for the good of the country. As to the work of the session, the last assembly had passed so many good laws that what was left could not take much time. It was necessary of course to support the government. After a forceful reference to the defeat of the "hellish designs" of the Pretender, he concluded by promising to concur in all good action.

The house at once made application to Hunter for his instructions relative to the sitting of the assembly at Perth Amboy.<sup>1</sup> The governor then promptly submitted article twenty-five of the instructions, which ordered that the assembly sit alternately at Perth Amboy and Burlington, "or otherwise as you with the advice of our aforesaid council shall think fit in case of extraordinary necessity to ap't them."<sup>2</sup> But the assembly nevertheless drew up an address demanding to be adjourned to Burlington, on the ground that the act of Ingoldsby's time regulating the place of the sitting of representatives, one of the few provincial laws which had been confirmed by the Crown, required that all sessions be held at that town.<sup>3</sup>

Hunter had expected such an attack, for he had consulted his council relative to his powers previous to the session. In replying to the assembly he took the



prerogative of the Crown, and that the action of the late Queen could not be binding upon her successor. The act in question would have to be confirmed by King George before it would be again in force. He had reasons of great weight why the session should be at Amboy.<sup>1</sup> The executive was so careful in this matter that upon examining the assembly journal he objected to the entry of his reply, thinking with apparent reason that there had been an attempt to misrepresent what he said.<sup>2</sup> He therefore sent his answer in writing and caused it to be entered.<sup>3</sup> Immediately afterward the speaker "returned," and requested Hunter to repeat what he had originally said, "for the sake of his memory." Hunter did so, and this second statement also was entered. The governor now charged the assembly with endeavoring to usurp the executive powers of the government, when as a fact they had "but a third share in the legislative."<sup>4</sup>

After this skirmish the house proceeded to business, drawing up several bills and undertaking to examine the accounts of Thomas Gordon, the receiver-general and treasurer, and of all those concerned in the expeditions to Canada and the issuing of the bills of credit.<sup>5</sup> The majority as usual endeavored to make their opponents feel their power. William Harrison, the sheriff of Gloucester, after an examination, was ordered to receive a reprimand for holding an improper election.<sup>6</sup> The qualifications of Capt. Farmar, always a supporter of the governor, were challenged, and he was apparently about to be disqualified.<sup>7</sup> A rather interesting point was raised by the election of William Clews as member from Salem

<sup>1</sup> *New Jersey Archives*, vol. xiv, p. 10.

county. He refused to take the qualifying oath, and as Hunter did not regard him as either a Quaker or a reputed Quaker he refused to let him affirm, as the benefit of the act giving validity to affirmations was confined to the Friends.<sup>1</sup> But when the house informed the governor that Clews was reputed a Quaker he promptly qualified him.<sup>2</sup> A bill was brought in relating to land records in East Jersey, and on April 26th the house resolved that the proclamations dissolving the last three assemblies and such other papers as the house judged necessary be laid before it.<sup>3</sup> Before any open conflict took place, however, Hunter prorogued the assembly till May 7th.

The results of the prorogation were far-reaching, and if they were foreseen by Hunter he exercised great political shrewdness in taking the step. When May 7th arrived he continued the adjournment till May 14th, and on that day only nine members appeared.<sup>4</sup> All the leading opponents of the government including the speaker, Coxe, Hall, Clews, and Spicer had purposely absented themselves. But if their design was, as seems probable, to baffle the executive in this way they were woefully at fault. Their absence gave the proprietary supporters the very opportunity which they sought. On the 19th the members who were present addressed Hunter praying him to take such measures as would secure the attendance of the absentees. He accordingly sent warrants to "several absentees" commanding their attend-

sergeant-at-arms for the absentees.”<sup>1</sup> On the 20th, a majority being present, they accordingly met and chose John Kinsey speaker. This selection of course meant that the supporters of Hunter were in control of the house.<sup>2</sup>

Hunter in his speech expressed his hearty approval of the choice the assembly had made. He hoped that the conduct of the late speaker would open the eyes of all such as had been imposed upon by him. As to recommendations, he referred to his speech at the last session, but as harvest was drawing near he hardly thought they could do more than the most necessary things like providing for the support of the public credit. They knew that the time of expiration of their bills was approaching, and something must be done to prevent confusion in the currency.<sup>3</sup>

But though the house appears to have worked industriously it did not accomplish much in the way of legislation. On June first it asked the governor for an adjournment if it were in any way possible until the latter part of September, as corn harvest was at hand, and then hay harvest and seed time would demand the attention of the members. Hunter at once consented, adjourning them until October third. Only one bill, that to enforce the payment of all public taxes, was completed and accepted.<sup>3</sup>

But during the month important political changes had already been accomplished. The house, after voting that Coxe's absence was a breach of trust, expelled him.<sup>4</sup> The other absentees were ordered to repair at once to the house and each was to be served with a copy of the order.<sup>5</sup>

<sup>1</sup> *Assembly Journal*, May 19, 1716.

<sup>2</sup> *Ibid.*, May 20, 1716.

<sup>4</sup> *Ibid.*, May 21 and 22, 1716.

<sup>3</sup> *Ibid.*, June 1, 1716.

<sup>5</sup> *Ibid.*, May 21, 1716.

William Lawrence who had not only failed to appear but had also disobeyed Hunter's warrant was arrested by the sergeant-at-arms, brought before the house,<sup>1</sup> and compelled to acknowledge his guilt.<sup>2</sup> As Brockholst and Ackerman, the members from Bergen, also disregarded the governor's warrants, they were declared in contempt and expelled.<sup>3</sup> Later in the session, when the sergeant-at-arms reported that he had served the orders upon the other absentees, and they paid no attention, the house likewise expelled Hall and Clews of Salem County, and Bull, Huling and Joyce, also of the western division.<sup>4</sup> Spicer was declared in contempt, and was to be served with a warrant, but he was not expelled, as he had not attended any of the sessions, and had not even qualified as a member. New elections were ordered where men had been expelled, but the expelled members were declared incapable of sitting. By this wholesale procedure the control of the lower house was permanently secured by the proprietary party.

It is almost needless to add that during the session the house had agreed perfectly with Hunter and the council. In their addresses to his excellency the members declared that his whole administration had been "a continued series of justice and moderation," and declared that the sole study of Coxe was to disturb the tranquillity of the province.<sup>5</sup> Council and assembly joined in sending an address to the Crown expressing their loyalty.<sup>6</sup>

It was natural that the governor after obtaining such an agreeable house should not be in a hurry to dissolve

it, and indeed during the remaining five years of his administration the seventh assembly continued in existence. After the rout of Coxe, for such it really was, open opposition to the policy of Hunter collapsed. Coxe himself left the province, and after a sojourn in Pennsylvania, sailed for England.<sup>1</sup> William Hall soon after died, and Basse, like a true politician, made his peace with the existing powers. Yet on one point the foes of Hunter had won a fruitless victory, for the Lords of Trade in 1716 had written, stating that as the act regarding the sitting of assemblies had been formally confirmed, it must stand, notwithstanding the change in sovereigns, until superseded by another act.<sup>2</sup>

The third session of the seventh assembly met in November, 1716, at Chesterfield, or Crosswicks, near Burlington.<sup>3</sup> The meeting was not held at the latter town itself because of an outbreak of small-pox. New elections had been held where members had been expelled, and the membership of the house was nearly full. But none of the opposition leaders held seats, and there were few serious differences in opinion. Basse represented Cape May, but proved a peaceful and useful member. Jacob Spicer, too, was brought in early in the session in the custody of the sergeant-at-arms, but he excused his prolonged absence on the ground of extraordinary business, and said that his conduct was not due to contempt. The house then voted to receive him, and he was qualified.<sup>4</sup> The greatest harmony prevailed during the entire session, a fact which was the more remarkable since much legislation was accomplished.

through. But a great deal of time was spent on financial questions. The accounts of the treasurer, Gordon, were examined by the assembly and a committee of the council named by Hunter at the request of the former body.<sup>1</sup> Dr. Roberts, the treasurer of the western division was compelled to submit his accounts, being arrested and brought before the house by these rgeant-at-arms.\* The figures of the treasurers were finally approved,<sup>3</sup> but the greatest remissness was found in the collection of the taxes, Burlington alone being in arrears £246 8s. 10d., the whole amount of the last tax.<sup>4</sup> Much attention was also given to the handling of the bills of credit. The act of support received much attention, and it was eventually decided to vote support for three years. The governor's salary was raised £100 and other officers were likewise given increased pay.<sup>5</sup> The work of the session was not only approved, but viewed with satisfaction by Hunter.<sup>6</sup> But the shrewd Scot was careful, as usual, to keep himself in the background during the debates. Desire to dictate openly was certainly not one of Hunter's faults.

The governor did not deem it necessary to summon the assembly again till April, 1718, when they met at Amboy. He put before them as the chief need of the session the support of the government, as the former act was about to expire.<sup>7</sup> But the house replied in a respectful address that though they were ready to provide the needed support, the private affairs of the members did

<sup>1</sup> *Assembly Journal*, Dec. 17, 18, 1716.

<sup>3</sup> *Ibid.*, Dec. 29, 1716; Jan. 1, 1716-17.

not permit of a long session. Therefore they prayed to be adjourned till the fall or winter.<sup>1</sup> With this reasonable request Hunter promptly complied. Confidence and good feeling were displayed by both governor and house.

Meanwhile Coxe in London had been making representations to the home government against Hunter,<sup>2</sup> and rumors were spread by his supporters in New Jersey that the latter was about to be superseded. A paper charging Hunter with various offenses, especially in connection with the proceedings of the recalcitrant members of the seventh assembly, was drawn up and signed by about fifty of the anti-proprietary party in the province.<sup>3</sup> These actions evidently caused Hunter uneasiness, and he took every means to defend himself.<sup>4</sup> He was in no serious danger, however, and upon investigation his administration received the approval of the Crown.<sup>5</sup> No disorder of any kind had occurred in the province.

In January, 1718-19, Hunter met his assembly for the last time, and while the session was harmonious and successful it was marked by several important considerations. In his opening speech the governor reminded the members of the fact that the adjournment to this time was occasioned by their own desires. He spoke of the need of further support, and made a plea for more liberal salaries for the officers of the province. The assembly was also reminded of the necessity of legislation on the currency. The passage of an act providing for the ascertaining of the division line between New Jersey and New York was advised, and lastly Hunter, in accordance with

<sup>1</sup> *New Jersey Archives*, vol. xiv, p. 80.

instructions, urged the appointment of an agent, since New Jersey was the only province unsupplied, and the business of the province suffered in consequence. The governor asked dispatch, and referred to his own unhappy state of health.<sup>1</sup>

The house as usual replied by an address.<sup>2</sup> This was courteous, but certainly did not meet the wishes of the executive in all respects. They would provide support and see that no injury was done by the bills of credit. They were willing to pass an act for the division line, but humbly maintained that the expense should be borne by the proprietors. As for an agent they regretted that the means of the province were not sufficient to maintain one. The address concluded with expressions of loyalty to the king and regard for Hunter.

The assembly passed after lengthy consideration, but no open objection, acts not only for ascertaining the dividing line from New York, but also for running the partition line between East and West Jersey. An act of support was also carried, but the assembly would not advance salaries. Indeed, the salary of the chief justice narrowly escaped reduction, and several of the subordinate officers were actually reduced.<sup>3</sup> The act was for only one year, but it was understood that this was because of Hunter's approaching retirement.

Much time, as usual, was spent upon financial affairs. After consideration Hunter was requested to name two treasurers in future, one for each division. To this he readily agreed "as it was for the ease of the people."<sup>4</sup>



of Gordon, the provincial treasurer, and of Roberts, the treasurer of the western division, and found them unsatisfactory in the extreme.<sup>1</sup> The assembly then addressed Hunter to name some one else in place of Gordon.<sup>2</sup> Just before the close of the meeting the governor spoke to the house on the subject. He said that "since the house had laid hands upon the treasurer," he would be glad if the affair could be settled during his administration. He therefore wished to know whether the house desired him to prosecute Gordon.<sup>3</sup> Thus he virtually admitted that the control of the treasury was the special function of the representatives. The house after consideration replied that as they had found the treasurers' statements merely inconsistent they could not wish prosecution before the accounts were more fully settled and adjudged.<sup>4</sup>

The session was prolific in acts, though some were of a private character. But a great difficulty was found in the fact that the taxes were in arrears over £1000.<sup>5</sup>

With the adjournment of the fifth session of the seventh assembly Hunter's connection with the legislative proceedings ceases. The work he had accomplished will speak for itself. He had found the departments of the government in bitter conflict; he left them coöperating to good purpose. It is true that he had been content to sacrifice some of the authority insisted upon by former governors, but the executive would probably have lost more through conflict with the assembly. Hunter understood his place as executive under a representative system, better, no doubt, than those who drew his instruc-

tions. The worst that can be said of him is that he identified himself with a party and that he was not too scrupulous in the means he employed against Coxe and his other opponents. But it was impossible to induce the bitter wranglers whom he found in the council and assembly to agree. Either one faction or the other must go. It may be a question whether the governor made the right choice, but it certainly would have been far harder for him to maintain himself against the opposition of the proprietors. It does seem as if, for a time at least, Coxe and his party represented majority sentiment in New Jersey, but Hunter always maintained that the election of Coxe and his followers was secured by fraud "through an inundation of Swedes."<sup>1</sup> The opponents of Hunter were certainly far more unscrupulous than he. At any rate Hunter must receive from the historian the commendation due to him who accomplishes excellent results.

Although Governor Burnet had the advantage of Hunter's friendship and advice, he began his relations with the legislature most unfortunately. Although it was the prevailing opinion in New Jersey that the appointment of a new governor required the election of a new assembly, he determined to retain the body which had co-operated so well with Hunter, and summoned a sixth session of the seventh assembly in February, 1720-21. Burnet's attitude upon the legality of continuing an assembly was approved by the Board of Trade,<sup>2</sup> but it led to a heated conflict. Although most of the members came to Burlington, they refused to regard themselves as a legal assembly.<sup>3</sup> Burnet believed that there

<sup>1</sup>*New Jersey Archives*, vol. iv, p. 210.

<sup>2</sup>*Ibid.*, vol. xiv, p. 183.

<sup>3</sup>*Ibid.*, vol. xiv, p. 145.

was a regular conspiracy to defeat his administration and cast the blame upon the Jacobite, George Willocks,<sup>1</sup> who had been a supporter of Hunter, but whose refusal to take the oaths to King George prejudiced the new governor, fresh as he was from old-world politics, against him. But the real cause of the trouble seems to have been the refusal of Burnet to lend himself to the plans of the Amboy group of proprietors who desired to secure an act incorporating the proprietors of East Jersey in such a manner as to place all the real power in their own hands.<sup>2</sup> This antagonizing of a powerful proprietary interest by the executive was a departure from the policy of Hunter.

After much difficulty the governor at length succeeded in persuading the assembly to meet for business on February 28th. Before his formal speech he told the members that they had behaved undutifully, but he took it that their presence at that time denoted a change. In his address he made a plea for harmony, stating that he had received a favorable character of the assembly from Hunter. Burnet then asked for a more liberal support, as the salaries of the royal officers were insufficient. He also spoke of the need of action to benefit the currency, avowed his desire to assent to all good measures, and closed with generalizations about the goodness of King George.<sup>3</sup>

But further difficulties at once followed, and Burnet, to compel the house to reflect upon its conduct, took the rather irritating measure of adjourning it from day to day for twenty days.<sup>4</sup> Perhaps the chief subject of

<sup>1</sup> *New Jersey Archives*, vol. v, pp. 11, 32.

conflict was the matter of support. The house drew up a bill for support for two years, though it refused to increase the appropriations. Hunter would no doubt have accepted this as the best that could be obtained under the circumstances.<sup>1</sup> But Burnet took his stand upon his instructions which required that grants for support be unlimited in time.<sup>2</sup> He refused to consider an appropriation for less than five years. The council accordingly, at the instance of the governor, amended the bill for support, to accord with the instructions.<sup>3</sup> The house, of course, showed the true colonial spirit in the matter, and not only refused to agree to the amendment, but declared that the council had no right to amend a money bill.<sup>4</sup> For this conduct the assembly was scolded by the governor, but the result was that no support was given.

Another subject of contention was regarding the form in which new members of the assembly should be qualified. At the beginning of the session the house decided that two of its members were not properly qualified, and accordingly ordered new elections. When the new members arrived the house desired Burnet to send the clerk of the Crown with the rolls of oaths that they might be sworn.<sup>5</sup> But Burnet, who believed that the former members had been dismissed because they had evinced a willingness to agree with the executive, replied that the practice had always been to swear new members before the governor, and this must be carried out.<sup>6</sup> The house then cited a number of cases when members had been sworn by the clerk before the assembly,<sup>7</sup> but Burnet declared

<sup>1</sup> *New Jersey Archives*, vol. xiv, pp. 160, 190-1.

<sup>2</sup> *Ibid.*, vol. xiv, pp. 153, 193.

<sup>3</sup> *Ibid.*, vol. xiv, p. 193.

<sup>4</sup> *Ibid.*, vol. xiv, p. 195.

<sup>5</sup> *Ibid.*, vol. xiv, p. 154.

<sup>6</sup> *Ibid.*, vol. xiv, p. 155.

<sup>7</sup> *Ibid.*, vol. xiv, p. 157.

that such instances made no difference. The governor had the power to commit the act to another if he chose, but if he required, members must be sworn before him.<sup>1</sup> The controversy continued without satisfaction to either department,<sup>2</sup> but no record appears that the oaths were administered.

A second question also became involved. Burnet in his address to the house on the question of the qualifications of members declared that the acts of the provincial legislature regulating qualifications were not in force, as they had not received the confirmation of the Crown, and changes had since been made by the Crown in the instructions which were at variance with the acts.<sup>3</sup> As an instance of such change, the instructions now required the members to possess an estate of £500 sterling, while the provincial acts required only £500 proclamation money. To this wholly untenable proposition the assembly naturally replied by resolving that provincial acts were in force until disallowed by the home government.<sup>4</sup> The governor spoke to them hotly on the subject, but of course gained nothing.

There was a dispute about military concerns. Burnet laid before the council the instructions which required him to obtain contributions from New Jersey and other colonies for the defense of the northern frontier, to provide suitable fortifications for New Jersey itself, and to insist upon a strengthening of the militia. The council agreed that the defense of the frontier was a matter of concern to New Jersey, and that she ought to contribute. But they held that the situation of the settlements in New Jersey made fortification wholly unnecessary. They

<sup>1</sup> *New Jersey Archives*, vol. xiv, p. 158.

<sup>2</sup> *Ibid.*, vol. xiv, p. 177.

<sup>3</sup> *Ibid.*, vol. xiv, p. 155.

<sup>4</sup> *Ibid.*, vol. xiv, p. 162.

agreed that the militia should be strengthened, since the defense of the Jerseys really depended upon it, and drew up a bill for that purpose.<sup>1</sup> But the assembly at once amended it so that it merely provided for a continuance of the former conditions.<sup>2</sup> They would not be moved from their position and the bill was lost. Burnet included this matter also in his scoldings.

While the governor did not try to interfere with the house in the work of auditing the treasury accounts and carrying on the further financial supervision which it had assumed, he did criticise the assembly for condemning the accounts of Thomas Gordon, the former treasurer, before he had been able to appear and be heard.<sup>3</sup>

Throughout the session Burnet, though firm, displayed lack of tact. He personally addressed the members of the house no less than seven times and on six of these occasions he had the speaker and the assembly summoned before him. He sent a lengthy message, also, in reply to a set of resolutions voted by the house.<sup>4</sup> His speeches were hardly more than scoldings, and he showed a constant desire to impress the members with the fact that he was wiser and more accurate in his knowledge than they. At first he endeavored to put them into the position of well-meaning men<sup>5</sup> who had been misled by clever and designing rascals such as Willocks; but he finally dismissed them with direct charges of misconduct.<sup>6</sup>

The assembly on its part was not unwilling to retaliate in kind. Early in the session it passed the resolutions

<sup>1</sup> *New Jersey Archives*, vol. xiv, pp. 167-175.

<sup>2</sup> *Ibid.*, vol. xiv, pp. 197-8.

<sup>3</sup> *Ibid.*, vol. xiv, p. 196.

<sup>4</sup> *Ibid.*, vol. xiv, p. 158.

<sup>5</sup> *Ibid.*, vol. xiv, p. 152.

<sup>6</sup> *Ibid.*, vol. xiv, p. 199.

which so excited Burnet's wrath.<sup>1</sup> These declared among other things that the house had not been led aside into practices dangerous to the public peace and derogatory to the prerogative; that they were not sensible of heats and animosities among themselves as the governor charged; and that their cheerfulness in raising a suitable support was such as to entitle them to the same good character that they had from Hunter. Other resolutions defended their positions on the several subjects of controversy. On April sixth the house presented an address to Burnet<sup>2</sup> which covered some of the same points as the resolutions, but also complained directly of the governor's conduct in adjourning the house twenty days to the great expense of the province, and of his meddling with the business of the house which they took to be a breach of privilege. They stated that even Cornbury, the worst governor of all, never interfered with the house when it determined the qualifications of members, though he had refused to swear three of them. However they charitably suggested that Burnet would not have gone to such lengths had he not been imposed upon by designing men.

Later, however, the house became more conciliatory. After having been shown a letter of December 20, 1720, from the Board of Trade, they willingly admitted that Burnet was justified in continuing the assembly. On April 26th they presented an address of very friendly tone, ending by saying that they hoped a good understanding had now begun.<sup>3</sup> But the governor was apparently as much displeased with their later action

their earlier conduct. The dissolution of the long-suffering assembly by the governor on May 26, 1721, brings to the student a sense of relief. Yet the quarrels between Burnet and the assembly have in one respect an interest beyond many of those we have considered, for they were manifestly not entirely the outgrowth of party politics in the province, but grew rather out of the natural differences in object between the representative of the home government and the representatives of the people of the colony.

But the unpleasant session just described was not, as might have been expected, the forerunner of later stormy proceedings. When the eighth assembly at length met, in March, 1721-2, at Amboy, it was constituted partly at least of new men who had had no share in the recent disputes.<sup>1</sup> Burnet, himself, appears in quite a different role, and no doubt had learned something from his experience. After the assembly had chosen Dr. Johnstone, the proprietor, as speaker, the governor reminded them of the necessity of providing suitable support for the government. In this matter he asked them not to consider so much his own salary as that of the inferior officers, many of whom could not cover expenses. He congratulated the assembly upon the mineral discoveries recently made in the province, and closed by patriotic reference to the defeat of the Pretender.<sup>2</sup> The house replied as usual by an address, in which they said they would demonstrate their loyalty by providing for the government. They regretted that the circumstances of the province would not permit them to support the



imaginary mineral treasures became real, they would make the government a partaker in their advantages.<sup>1</sup> Burnet thanked the members for their good intentions and the work of the session began.

The discords of the seventh assembly were apparently forgotten. The house without undue delay prepared a bill for support for five years, thus conceding to the governor the long-term appropriation upon which he had insisted. This was certainly an important victory for Burnet. On the other hand the subordinate officers received little advance in salary.<sup>2</sup> Numerous other measures, including a militia act, were carried through<sup>3</sup> and the house exercised its usual supervision of the finances. The auditing of Gordon's accounts seemed to prove that he was indebted to the sum of £1070 8s. 7d., and there was the usual heavy arrearage of taxes.<sup>4</sup>

Upon only one important measure was the accord between executive and legislative broken. James Smith, the provincial secretary, had memorialized the Lords of Trade, representing the hardship he suffered owing to the reduction of the fees of his office by several acts passed while Basse was secretary, and aimed against him.<sup>5</sup> Burnet, having received a letter from the Lords upon this matter, prepared a bill repealing the portions of acts cutting down the fees.<sup>6</sup> This bill was promptly passed

<sup>1</sup> *New Jersey Archives*, vol. xiv, p. 207.

<sup>2</sup> *Assembly Journal*, April 4, 1722.

<sup>3</sup> *Ibid.*, May 5, 1722.

<sup>4</sup> *Ibid.*, April 27, 1722.

<sup>5</sup> They were: an Act for Shortening law Suites and Regulating the practice of the Law; an Act for enforcing the ordinance for establishing of fees; and an Act for Acknowledging & recording of deeds & Con-

by the council, but the house after consideration refused to take action till next session.<sup>1</sup> Meanwhile the house had passed a bill for compelling clerks and other officers who kept records to give security. Burnet held that this measure was intended to ruin the secretary, and when it appeared that the bill instead of being copied by the clerk was in the hand-writing of Willocks, his wrath blazed up. So angry was he that when Col. Anderson of the council said that he did not regard Willocks as an enemy of the government he promptly suspended him.<sup>2</sup>

But there was no serious break between the governor and house. The assembly toward the end of the session greatly pleased Burnet by carrying a bill for the security of the government which enabled him to prosecute as enemies all who refused the oaths of allegiance.<sup>3</sup> Thus his hands were strengthened against Willocks, who was soon compelled to flee the province. Burnet on the closing day thanked the members warmly and requested them to adjourn themselves till October first.

The second session of the eighth assembly was doubtless even more satisfactory to the governor. It met on September 27, 1723, at Burlington. Some little delay was caused by the absence of Dr. Johnstone, the speaker, who declared himself ill and unable to attend, but upon the direction of the governor a new speaker, William Trent, was elected.<sup>4</sup> The change was a happy one; for Johnstone, though he pretended to be favorable to Burnet, was actually the partner of Willocks and apparently had been at the bottom of some of the recent troubles.<sup>5</sup>

<sup>1</sup> *Assembly Journal*, May 3, 4, 1722.

<sup>2</sup> *New Jersey Archives*, vol. xiv, pp. 220-221.

<sup>3</sup> *Assembly Journal*, May 4, 1722.

<sup>4</sup> *Ibid.*, Sept. 27, 1723.

<sup>5</sup> *New Jersey Archives*, vol. v, p. 56 *et seq.*

During the session the support granted to the government was increased by the appropriation of a fund of £1,000 per annum, to the great satisfaction of Burnet and the other crown officers who shared in the benefits. This appropriation ran for ten years. But the unprecedented liberality was due to the fact that the royal instructions permitted the issue of bills of credit only in acts for support.<sup>1</sup>

Yet there were some differences of opinion. The governor and council had recently prepared an ordinance reconstituting the court of the province. This was admittedly a part of the executive power, but the ordinance caused complaint because under its provisions the supreme court was to sit only at Amboy and Burlington. One of the first steps of the assembly was therefore to address Burnet for permission to bring in a bill changing this ordinance.<sup>2</sup> But the governor and council, though they professed themselves willing to remedy all inconveniences, were unwilling that it should be done by bill.<sup>3</sup> Later in the session the house again addressed Burnet, asking that he appoint a chief justice who resided in New Jersey. They made no charges against Mr. Jamison, but believed that inasmuch as the governor necessarily resided in New York the chief judicial officer should be always in the province.<sup>4</sup> Burnet replied favorably, and soon afterward nominated Trent as chief justice.<sup>5</sup> The house voted that there should be paid to a chief justice who would ride the circuit £100 as occasion required;

<sup>1</sup> *New Jersey Archives*, vol. v, p. 75; *Assembly Journal*, Oct. 8, 1723.

<sup>2</sup> *Ibid.*, Oct. 16, 1723.

<sup>3</sup> *New Jersey Archives*, vol. v, p. 85.

they also gave the attorney-general £40 a year for two years in addition to his regular salary; the second judge received £50 and the clerk of the circuits £20.<sup>1</sup>

The house sent up a bill for obliging the estate of Thomas Gordon, now deceased, to make good the deficiencies in the accounts of the province.<sup>2</sup> But the council refused to approve immediately, and ordered that at the next session the parties concerned should appear. The house was desired to appoint persons to make good its charges against Gordon,<sup>3</sup> a step which it immediately took.

During this session the house also engaged Peter La Heupe as its agent in England at a salary of £100 a year.<sup>4</sup> Although the governor had previously recommended the appointment of an agent for the province, neither the executive nor the council was to have any share in controlling his conduct. That no serious opposition was offered to this step of the house is somewhat remarkable. By obtaining an independent agent its influence was much increased.

Petitions were received from the widows of Mompesson and Pinhorne for sums due their husbands under warrants from Cornbury. Application was also made by Mary Ingoldsby for arrears due in Ingoldsby's time.<sup>5</sup> But though Burnet in his speech, by royal order, endorsed these claims,<sup>6</sup> the assembly would not recognize them.<sup>7</sup> Evidently the recollections of Cornbury and Ingoldsby were still bitter. These points of difference, however,

<sup>1</sup> *Assembly Journal*, Nov. 23, 27, 1723.

<sup>2</sup> *Ibid.*, Nov. 26, 1723.

<sup>3</sup> *New Jersey Archives*, vol. xiv, p. 261.

did not seriously injure the good feeling between the governor and the representatives.

In May, 1725, a third successful session of the eighth assembly was held. As the original act of support was about to expire, the house made a new appropriation which was again to run for five years.<sup>1</sup> Much time was given to financial matters, as was necessitated by the system of bills of credit. The case of Gordon was considered in the council, a defence of the estate being made by his widow.<sup>2</sup> At the very end of the session, the house, which had given up its attempt to condemn Gordon's estate by an act, requested Burnet to order the prosecution of the representatives of the late treasurer, and the governor assented.<sup>3</sup> A disputed election case in Burlington also forced itself upon the attention of the representatives. Col. Coxe had again appeared and disputed the election of the Quaker, Mahlon Stacy. But after a spirited debate Stacy was finally seated,<sup>4</sup> and the sheriff was reprimanded for improper conduct in the election.<sup>5</sup> Some useful measures were carried, but this was the last session of the assembly, because the death of George I brought about its dissolution.

The ninth assembly, however, the last under Burnet's administration, was very similar to the eighth in constitution, though the growing influence of John Kinsey, Jr. was more clearly shown in its deliberations. The new assembly met in Dec., 1727, at Amboy, and chose Dr. Johnstone speaker. Burnet explained his failure to meet them the previous spring by the necessity he was under

<sup>1</sup> *Assembly Journal*, June 12, 16, 1725.

of counteracting the advance of the French on the northern frontier. This work he believed to be for the protection of New Jersey as well as of New York. He also explained that he had summoned the meeting at Amboy instead of Burlington because he was momentarily expecting the arrival of his successor. Burnet suggested that the province should provide a suitable residence for its governor. He, himself, had been at considerable expense in obtaining a house which he would like his successor to escape.<sup>1</sup> In their answering address the house after professions of loyalty to George II said among other things that they were highly pleased with the alternate sessions at Burlington and Amboy, but they had no objection to the present meeting if it were not made a precedent. They felt that they must say, however, when a change of governors was about to be made that it was a great disadvantage for New Jersey to be joined with so powerful a colony as New York. This was not a reflection upon Burnet, as they regretted that he had not been wholly theirs. The assembly took no notice whatsoever of the advice that they procure an executive mansion.<sup>2</sup>

The work of the session was upon the whole interesting. Early in it the house addressed Burnet asking that he allow a committee of the council to join one of the house to consider means to redress the hardships suffered under the present arrangement of courts.<sup>3</sup> But the governor only replied that he would lay the matter before the council.<sup>4</sup> Thus aggression in this field by the assembly was again checked.

opinion arose between the council and house. This grew out of an effort to ensure a more satisfactory recording of deeds and land titles. We may believe that the quarrel over this question was partly the result of the resurrection of the old council of proprietors of East Jersey which had come about in 1725. The proprietors evidently controlled the council absolutely, while the house, though not actually anti-proprietary, was not devoted to the interest of the proprietors. The reappearance of the land question in any form before the provincial legislature is significant. The house had prepared a bill for preventing the trouble and expense involved in the enrollment of deeds and conveyances of land. This bill the council would not accept without amendment.<sup>1</sup> They desired that deeds of proprietors should be recorded only in the office of the recorder of the proprietors, as otherwise the "door would be opened" for frauds and mistakes regarding the distribution of the proprietary dividends. Disagreement and unsatisfactory conference followed. To remedy the difficulty the council then sent down a bill to prevent frauds and mistakes in obtaining warrants for surveys of lands and for keeping minutes of the deeds on which they were founded and for recovery of the minutes of the council of proprietors.<sup>2</sup>

Upon continued application from the house as to their decision on the former bill the council replied that they had resolved not to come to a resolution upon it until the house had taken action upon the bill to prevent frauds and mistakes.<sup>3</sup> This message the house hotly resented, declaring that they were under no obligation to render

message defending themselves, declaring that their bill only involved the substance of what had been agreed in conference, and asserting that all representatives were responsible for their actions.<sup>1</sup> The house maintained that such a thing as the new law opening the door for frauds was purely imaginary, for as things then stood there was no necessity for recording deeds anywhere. The wrangle continued and both bills were lost, as well as another bill for prescribing the time of recording surveys, upon which there had been some difference of opinion. In this conflict the governor, however, does not appear to have been very directly involved.

During this session a bill was passed for frequent meetings of the assembly. It provided that sessions should be held at least once in three years, and that no assembly should last longer than the same period. Burnet accepted this measure,<sup>2</sup> but it was later disallowed by the home authorities. In spite of the spirited debates the assembly was industrious, and thirteen acts were finally passed.<sup>3</sup>

Burnet, who was transferred to the governorship of Massachusetts Bay, was succeeded by the amiable courtier John Montgomerie. Though his administration had not been marked by the tact and political insight so characteristic of Hunter, he had given New Jersey honest and honorable rule, and had added prestige to the

<sup>1</sup> *Assembly Journal*, Feb. 6, 1727-8.

<sup>2</sup> *New Jersey Archives*, vol. v, p. 192; vol. xiv, p. 388.



royal governorship. In some respects Burnet had actually strengthened the executive, as in the case of his obtaining long appropriations for support. If he could have suppressed a little more his own personality he would have lacked little of the success of his great predecessor.

Montgomerie, upon advice of his council, decided to follow the example of Burnet, and retain the same assembly as his predecessor. The result was scarcely more satisfactory. Montgomerie journeyed to Burlington in December, 1728, and opened the second session of the ninth assembly in a courteous and well-worded speech, in which, however, the only positive recommendation was for the granting of a suitable support.<sup>1</sup> The assembly replied in kind. They congratulated themselves upon receiving as governor one who had been so close to the king and who had held such other office as that of member of parliament.<sup>2</sup>

The house at once began work upon an act of support for three years, and other measures. But on January 9th it voted after debate that it would be advantageous for New Jersey to have a distinct government, and a committee was sent to the governor and council to ask their co-operation and a conference as to the best mode of obtaining separation. They assured Montgomerie that they had no desire to cause him uneasiness, but only to do what they thought their duty.<sup>3</sup> Such conduct was too much for the courtier soul of the new

<sup>1</sup> *New Jersey Archives*, vol. xiv, p. 396.

<sup>2</sup> *Assembly Journal*, Dec. 19, 1728.

<sup>3</sup> *Ibid.*, Jan. 9, 1728-9. This project was the work of John Kinsey, Jr.

governor. After consultation with his council he first adjourned and then dissolved the assembly which had dared to take such bold action without first ascertaining the will of the Crown.<sup>1</sup> In his communications with the home government Montgomerie heaped the blame upon the Quakers in such manner as to recall their arch-enemy Ingoldsby.<sup>2</sup>

Montgomerie did not meet the tenth assembly till May, 1730. Most of the members of the last house were returned, but John Kinsey succeeded Dr. Johnstone as speaker. The governor's speech made touching reference to the loving care of King George for his "remote dominions," but contained no positive recommendations,<sup>3</sup> while the house replied respectfully with similar generalities.<sup>4</sup> The session thus begun was rather prolific in acts and was unmarked by serious conflict. An act was passed for "the freedom of assemblies," which forbade any representative to accept a crown office while serving.<sup>5</sup> The council hesitated to assent to it at first, but eventually did so.

Just as had been the case in Burnet's time, the assembly insisted upon appropriating for immediate use the interest money accruing from the work of the loan offices. This the Lords of Trade had forbidden, but both Burnet and Montgomerie, accepting the representations of the leaders of the province, had endeavored to move them to change their decision.<sup>6</sup> Montgomerie now consented to the passage of a bill making such an appropriation, fearing that if he stood out the assembly might refuse to vote

<sup>1</sup> *New Jersey Archives*, vol. xiv, p. 399.

<sup>2</sup> *Ibid.*, vol. v, p. 234.

<sup>3</sup> *Ibid.*, vol. xiv, p. 408.

<sup>4</sup> *Ibid.*, vol. xiv, p. 410.

support.<sup>1</sup> Later the Lords of Trade expressed surprise at his action. A bill had been introduced to appropriate support for five years,<sup>2</sup> but the measure was later dropped and a new bill substituted, coupling the granting of support with the appropriations of the interest money.<sup>3</sup> Montgomerie, with the aid of Kinsey and Johnstone, managed to have the two measures separated, but only upon the understanding that both should be accepted.<sup>4</sup> The amount of support was about the same as that given to Burnet. While this matter was under consideration the council prepared a bill for additional support and for laying a duty on all copper ore exported, but the house would not consider an appropriation bill originating in the council.<sup>5</sup> A militia bill sent down, however, was accepted without opposition. During the session there are several indications that the house was not entirely under the control of the proprietors; among other things a bill for regulating the affairs of the proprietors of the Western Division failed of passage.

The chief cause of difficulty between the governor and the assembly had meanwhile been removed as the Lords of Trade had advised Montgomerie that they saw no reason for interfering with the petitions for a separate government, provided they were drawn peaceably and openly.<sup>6</sup> Much thought was undoubtedly given by the members to this subject. The agent, Partridge, was thanked for what he had already done and a regular appropriation was made for him for five years.<sup>7</sup> Toward

<sup>1</sup> *New Jersey Archives*, vol. v, p. 287.

<sup>2</sup> *Assembly Journal*, May 27, 1730.

<sup>3</sup> *Ibid.*, Jan. 3, 1730.

<sup>4</sup> *New Jersey Archives*, vol. v, p. 288.

<sup>5</sup> *Assembly Journal*, June 22, 1730.

<sup>6</sup> *New Jersey Archives*, vol. v, p. 247.

<sup>7</sup> *Assembly Journal*, June 5, 1730.

the end of the session a formal address to the crown for separation was prepared by the house without interference from the governor. In this address the assembly was careful to state that they had the best feeling for Montgomerie.<sup>1</sup>

The death of the governor in July, 1731, certainly turned out to be a misfortune to the province owing to the selection of an improper successor. Montgomerie was inexperienced and of no great ability. He was yielding in disposition, however, and would not have created serious opposition. All who met him seem to have credited him with good intentions.

Only one meeting of the assembly occurred during the administration of William Cosby, and this began at Burlington in April, 1733. Before it took place, however, Cosby had become involved in difficulties in New York which had necessarily an influence upon feeling in the sister province. He had antagonized violently Lewis Morris, whom he had removed from the chief-justiceship of New York, and James Alexander, the next ablest man among the proprietors of East Jersey. Though the quarrel originated in New York, Cosby endeavored to secure the removal of these two prominent persons from the council of New Jersey.<sup>2</sup> The Lords of Trade actually recommended the removal of Morris,<sup>3</sup> but the latter himself went to England and after representations on both sides maintained his position. Neither Morris nor Alexander attended meetings of the council under Cosby, but their influence, of course, was cast against him.

The session of 1733 was nevertheless not marked by

error in his speech excused his delay in calling the assembly by the fact that he had remained in England to cast his influence against the sugar bill, by the excessive cold of the recent winter, and by his regard for the convenience of the majority of the members. He said that he believed that they were resolved to raise a revenue for the government and revealed his uneasiness about the possible separation of New Jersey from New York by declaring that he would divide his time as far as possible between the two provinces. The speech closed with the usual patriotic references to the good intentions of the king.<sup>1</sup> The assembly in reply acknowledged the efforts of the governor against the sugar act and said that though they regretted that an earlier session was impossible they would now apply themselves to business with all diligence. They would endeavor to provide for the government so that he might pass a considerable time among them and were grateful to have a person of "his excellency's character" to govern them. The address of the house certainly revealed no lack of confidence.<sup>2</sup>

But in spite of its favorable expressions the assembly was slow in accomplishing results. After nearly seven weeks it had made little progress, and Cosby thought it necessary after administering a mild rebuke to adjourn it for a month. On reassembling, the house did better, though there is little evidence that it employed haste.<sup>3</sup>

The assembly finally gave the usual support for three years, and also passed an act appropriating interest money for the incidental charges of the government.<sup>4</sup> This measure Cosby approved, and the Lords of Trade,

in spite of their previous attitude, allowed it to stand. Four other acts were also passed, and the assembly performed its usual supervisory work over the finances, but a bill for the frequent calling of the assembly was lost in the council.<sup>1</sup>

Before the adjournment the house had addressed the governor upon the inconvenience of having members of the council who were not residents of the province. They prayed that he would name only residents for future vacancies in the council and to all other posts of trust. Cosby received the request favorably, and said he would take particular care in the matter.<sup>2</sup> The session was finally brought to a close on August 16, 1733. In the light of Cosby's record in New York it is impossible to commend his conduct as an executive. It must be admitted, however, that in his dealings with the assembly of New Jersey he gave no especial cause for offense. His death in 1736 prevented further trial of his abilities, as he did not again call a session in New Jersey.

During the period from the death of Cosby to the commissioning of Lewis Morris as New Jersey's first separate governor, the legislative department of the province was suspended. This interval was marked by renewed and successful application to the home authorities for independence from New York, in which proceedings Richard Partridge, the agent of the "general assembly," took an active part,<sup>3</sup> and by the unfortunate

<sup>1</sup> A bill for shortening of term of office and annulling the session of the

controversy between Morris and Col. John Hamilton regarding the presidency of the council. With these matters we are not, however, here concerned.

Looking back over the long and varied field of controversy between the executive and legislative departments during the union period, we are now in a position to see distinctly certain general characteristics of the conflict as well as its more important results. Stripping off the accidental circumstances connected with the various differences of opinion, we find that in the main they involved the following questions: (1) the payment of the salary of the governor and other officers; (2) the confirmation of the rights of the proprietors over the Elizabethtown tract, and other disputed districts; (3) the right of the house to have a responsible treasurer, to audit his accounts, and to provide for his punishment if necessary; (4) the right of the house to equality with the council upon such points as (a) conferences upon disputed bills, (b) access to the journals of the other house, (c) the examination of all documents, laws, and other similar materials; (5) the privileges and liberties of the house involving such matters as (a) the right of the house to determine the qualifications of its own members, (b) the right to have a clerk named by themselves in committee of the whole, (c) the right to the title of general assembly; (6) whether the appointment of a new governor required the election of a new assembly; (7) whether Quakers could hold office and enjoy other rights of complete citizenship; (8) the organization and especially the discipline of the militia; (9) the power of the governor to change the place of holding sessions; (10) the exclusive right of the governor and council to constitute and regulate the procedure in the courts; (11) the exclusive right of the

house to originate all bills appropriating money; (12) the appointment of non-residents to office; (13) the right of the house to address the Crown upon matters not approved by the governor and council, as the establishment of a separate government; (14) the validity of provincial laws not formally approved by the Crown; (15) the gratification of party and personal animosity.

To the student of colonial history it is not at all surprising that the house, vested as it was with control of the purse strings, should win victory upon nearly all of the issues and thus cut down gradually, but very materially, the sphere of action of the executive. Upon the first, third, fourth, fifth, seventh, thirteenth and fourteenth of the debated questions the victory of the lower house was practically complete. Upon the ninth issue also it was virtually successful. Upon the eleventh and twelfth the assembly maintained its position. The only reason that the efforts of the house to confirm the interests of the proprietors failed was that the later assemblies were not under complete proprietary control. If the house had remained true to the proprietors, it would easily have prevailed. The only issues upon which the house was, up to 1738, squarely defeated were the sixth and tenth. Of these the sixth was of comparatively little importance, while as to the tenth, the wishes of the house were to a great extent followed though its technical control was not established. In New Jersey, then, as in all of the American colonies, the whole trend of the political development was in the direction of making the governor the executor of the wishes of the assembly rather than its master. This result is the more interesting because, down at least to the administration of Burnet, the great political issue was between the proprietary and anti-proprietary parties. Executive and legislature



were in general opposed to each other as agents of the provincial factions rather than because of their inherently different objects and points of view. It is a false view which reads into New Jersey history during the earlier part of the eighteenth century opposition to the governor as the royal representative. The attacks upon the governor were always made upon the ground that he did not properly represent the king; that is to say, they were based upon the true principles of the English system of government. The theory was always that the interests of people and king were identical, and the time had not yet come when men saw that it was not so.

## CHAPTER XXIII

### THE JUDICIAL SYSTEM

UPON a topic on which so excellent a monograph as Judge Field's *Provincial Courts of New Jersey* already exists little indeed remains to be said. The present chapter is, however, required to make our survey of the political institutions of the Jerseys complete.

At the time of the surrender to the Crown complete systems of courts existed in both the Jerseys. In East Jersey the earliest court was that in the town of Bergen. After the English conquest there was another at Woodbridge. But these were purely local courts established by the corporations of the two towns in accordance with their charters.<sup>1</sup> The Monmouth settlers also established certain courts in virtue of their patent from Col. Nicolls. These, however, were discontinued after the submission of the Monmouth patentees to Berkeley and Carteret.<sup>2</sup>

But a court system was established first in 1675 by act of assembly. There was instituted first a monthly court of small causes for the trial of disputes under forty shillings. These courts were to be held in each town by two or three persons elected for the purpose, one of whom must be a justice.<sup>3</sup> Above these were to be county

each county. The county judges were also to be elected. Apparently the county court had unlimited jurisdiction, but there was, of course, appeal, though in cases under £20 this was to be allowed only to the court of assize or the court of chancery.<sup>1</sup> The court of assize was the provincial court, which was to meet once a year at Woodbridge or where the governor and council should appoint.<sup>2</sup> From it appeal lay to the governor in council and then to the crown. This general arrangement, though modified in numerous of its details,<sup>3</sup> continued until the surrender.

The name of the provincial court was changed to the court of common right under the Twenty-four Proprietors,<sup>4</sup> and its place of sitting was moved first to Elizabethtown, and then to Amboy.<sup>5</sup> It was given, also, jurisdiction in equity as well as in common law. According to Field this interesting combination of power was the result of Scotch jurisprudence, since in Scotland there was never a distinct court of equity.<sup>6</sup> The combination was not, however, satisfactory to the people, for in 1698 the general assembly, in the celebrated act declaring "what are the rights and privileges of his majesty's subjects inhabiting within this province," decreed that judges of common right should not be judges of the high court of chancery.<sup>7</sup> Equity jurisdiction was apparently intended to be exercised, if it was exercised at all, by the governor and council.

The development in West Jersey was in the main sim-

<sup>1</sup> Leaming and Spicer, *op. cit.*, pp. 96-7.

<sup>2</sup> *Ibid.*, p. 97.

<sup>3</sup> *Ibid.*, pp. 229-232, 270, 304, 347.

ilar. It is rendered especially interesting nevertheless, because of the predominance of Quaker influence with its peculiar and commendable attitude toward both legal procedure and crime. The simplicity of Quaker thought in this direction is vividly recalled when we read that Thomas Olive, when governor of West Jersey, used to dispense justice "sitting on the stumps in his meadows."

As the basis of the system in West Jersey, there was a court of small causes held by a single justice having jurisdiction up to forty shillings with appeal to the county court.<sup>1</sup> County courts were established for Burlington and Salem in 1682, and in the other counties somewhat later. They were held four times a year by the justices of each county, and appear to have had unlimited jurisdiction in all cases civil and criminal, except that they could not try offenses of a capital nature.<sup>2</sup>

Not until 1693 was there created a supreme court of appeals, consisting of one or more of the justices of each county and one or more of the governor's council.<sup>3</sup> Down to 1699 this court was appellate only, but in that year its nature was altered. It was renamed the provincial court, and was to be composed of three judges, to be chosen by the house of representatives and one or more of the justices of each county. It was to be held twice a year in each county, and was to have original as well as appellate jurisdiction where more than £20 was concerned. Appeal lay to the general assembly, a proof that the original political ideas of the Friends had not yet lost their vitality.<sup>4</sup>

In 1693 there was created for the first time a tribunal

with capital jurisdiction. This was a court of oyer and terminer, consisting of a judge named by the governor and council, aided by two or more justices of the county where the crime was committed.<sup>1</sup> Even this court, however, could not inflict the death penalty. Persons found guilty of treason or murder were to be turned over to the general assembly which was to give sentence.<sup>2</sup>

No traces of a court of equity are to be found in West Jersey.

Such, briefly speaking, were the systems of courts existing in the Jerseys when the royal government was established. Cornbury's commission, as we have already seen, gave him the power to establish all necessary courts both of law and equity, to name all judges, justices of the peace and other judicial officers, and to grant reprieves until the pleasure of the Crown could be learned in all cases but those of treason and wilful murder.<sup>3</sup> These sweeping powers were in one respect actually enlarged by the instructions which gave to the governor and council the right to regulate all salaries and fees, though these were required to be in moderation.<sup>4</sup>

The instructions, however, put upon the governor's control certain great limitations. To prevent arbitrary removals the commissions of all judges and justices issued by the consent of the council were to be unlimited in time. No such officer was to be removed without good cause signified to the Crown and to the Board of Trade. Nor was Cornbury himself to undertake the execution of any such office or to allow anyone else to do so by deputy.<sup>5</sup> The limitation, however, which had the most

<sup>1</sup> *Journal of the General Assembly*, 1702, p. 100.

immediate importance was that forbidding the governor, in spite of the legal power given, to erect without order from the Crown 'any court or office of judicature not previously existing. A list of all such already existing was to be sent home with all speed.'

The reconstitution of the provincial courts was one of the first problems to receive the attention of Cornbury's administration, and its solution in an admirable manner was, as has been elsewhere stated, one of the very few important services rendered by his government to the Jerseys. In 1704 was issued, upon the authority of the governor and council, "An Ordinance for Establishing Courts of Judicature."<sup>3</sup> We know that this subject had been considered more or less fully in the meetings of the council,<sup>4</sup> though unfortunately we shall probably never know positively who was the real author of the ordinance. There seems every reason to believe, however, that it was the work of Roger Mompesson, Cornbury's chief justice, who alone in the council possessed the necessary legal training.<sup>5</sup> Cornbury probably did no more than issue the ordinance on his responsibility.

The ordinance of 1704, while retaining essentially the existing courts, reorganized and recombined them in an excellent manner. The justices of the peace were to have cognizance of all cases of debt and trespass up to forty shillings. But there was to be a right of appeal to the next court of sessions in all cases above twenty shillings. In the justices' court causes were to be deter-

where the general court of sessions was held, to begin immediately after the sessions had ended. The court of Common Pleas was to have power to try all actions triable at common law. Actions might, however, be appealed or removed to the Supreme Court if they involved £10 or if the title to land was an issue. The courts of general sessions were to be held four times a year in each of the other counties, but three times in Cape May. Each session was to continue not exceeding two days. These courts were to meet at Perth Amboy for the county of Middlesex, at Bergen for Bergen, at Newark for Essex, at Shrewsbury for Monmouth, at Burlington for Burlington, at Gloucester for Gloucester, at Salem for Salem, and at the house of Shamgar Hand for Cape May.

The system was completed by the institution of a supreme court. This was to sit alternately at Perth Amboy and Burlington. It was to meet at Amboy the first Tuesday in May, and at Burlington the first Tuesday in November, but sessions were not to continue more than five days. The Supreme Court was to have cognizance of all pleas civil, criminal, and mixed as fully as the courts of Queen's Bench, Common Pleas, and Exchequer in England. Actions might be begun there if they were for over £10.

The ordinance further stated that one of the justices of the Supreme Court might, if need be, go the circuit and keep the supreme courts for the various counties at prescribed dates. Such justice was to be assisted on the circuit by two or more justices of the peace in each county.

The courts were soon put into operation by the commissioning of the requisite officers: a chief justice, a second judge, several associate judges, judges of the pleas for the counties, and justices of the peace.<sup>1</sup> At the beginning many irregularities in the practice of the courts naturally appeared and the conduct of the clique which surrounded Cornbury almost at once converted the tribunals of the colony into engines of injustice.<sup>2</sup> These abuses we shall examine later. The system as such was, however, an immediate success with the exception of the provision for sending a justice of the supreme court on the circuit. This clause appears from the beginning to have been ineffective.

There were, however, certain features in the judicial system of New Jersey which were not founded upon Cornbury's ordinance. As in the case of all the royal provinces the governor's instructions expressly gave to the inhabitants the right of appeal in case of error from the highest provincial court to the governor and council, which body thus became a part of the judicial system. But in such case those members of the council who were judges in the lower court from which the appeal was taken were not to vote, though they might be present to explain their decisions. If the case at issue exceeded £200 sterling, further appeal might be made to the Queen in council.<sup>3</sup>

The royal commission had also given Cornbury the right to appoint, when necessary, commissioners of oyer and terminer for the trial of criminal cases, a power of



Cornbury in addition issued in 1705, by and with the advice of his council, an ordinance for the establishment of a high court of chancery for the purpose of giving relief in cases where the strictness of the rules of common law made such action necessary.<sup>1</sup> The court of chancery was to consist of the governor and lieutenant-governor for the time being and any three of the council. They were to act as nearly as might be in conformity with the usages of the high court of chancery in England, and were to hold four stated terms each year. The court was to be open on Thursday of each week at Burlington to hear motions and make rules and orders thereon. Though the question of chancery jurisdiction was a matter fought over with great bitterness in New York and other colonies, the erection of the court seems to have aroused little attention in the Jerseys, and its work during the earlier part of the union period seems to have been of no great importance.

The wide control held by the governor over the judicial system was certainly one of the matters which aroused especially the jealousy of the assembly. In spite, however, of the bitter protests made by the representatives, both in the remonstrance of 1707 and elsewhere, against the miscarriage of justice in the courts under Cornbury, Mompesson and Pinhorne,<sup>2</sup> the legislature was naturally unable to pass any laws altering the judicial system materially until the accession of Hunter. The only act relating directly to courts passed before Hunter's arrival was that of 1704 "for Reviving and Continuing the Courts of Quarter Sessions and Common

The holding of these courts had been prevented by the attendance of the judges and justices upon the meeting of the assembly, and the object of the act was to continue all suits in them in the same status as before. But even this law was disallowed by the Crown, along with all the others passed by the second assembly, although in later administrations several similar laws were carried and allowed to stand.

With the arrival of Hunter, however, there was a change, and when in 1713 that governor at length met the assembly with a council over which he had control, the colonial legislature proceeded to pass several laws of importance relating to the courts. These laws, it is true, concerned legal practice rather than the structure of the courts, yet it is convenient to mention them at this point. Their general object was, of course, to prevent the abuses of justice which had so disgraced the province under Cornbury. An act for preventing corruption in the courts of justice declared all laws existing in England against bribery and corruption in the courts in force in New Jersey. Further, any judge determining a cause in a lower court who should sit in judgment thereupon in a superior tribunal was to forfeit £40. Another act was intended to prevent "Malicious Prosecutions by Information." This law ordained that no person should be tried upon information unless by an order of the governor signed in the council. The person accused was to be brought to trial at the second court after such information was filed or else discharged. Any person acquitted on such trial was not to pay fees, and if the attorney-general or any one else violated the statute the fine was to be £50. A third act was "for Ascertaining the Qualifications of Jurors."<sup>1</sup> This law enacted that all

<sup>1</sup> Allinson, *Statutes of New Jersey*.

grand and petit jurors were to be summoned by the sheriff or his deputy, or, in case either were concerned, by the coroner of the county. Jurors were to be of good fame and freeholders of the county for which they served. All grand jurors must possess at least £100 in real estate in the county, and petit jurors £100 in real or personal estate. A fourth most important law of the same session made the solemn affirmation and declaration of the people called Quakers acceptable instead of an oath in the usual form, and qualified them especially to serve as jurors.<sup>1</sup> This was a most necessary piece of legislation, and would have been enacted long before if Cornbury and Ingoldsby had not been deliberately false to the spirit of their instructions.

Another measure carried through was entitled "An Act for Shortening of Lawsuits and Regulating the Practice of the Law."<sup>2</sup> This was a lengthy act, which endeavored to prevent the virtual defeating of justice through the intentional spinning out of suits by imposing time limits for the trial of cases and the carrying out of other legal procedure. Theoretically, it was no doubt open to grave objections, though it was probably well suited to the circumstances of a frontier community. "An Act for Acknowledging and Recording of Deeds and Conveyances of Land within each respective County of the Province,"<sup>3</sup> provided for the witnessing of transfers of land before the judges and justices of the respective counties and the recording of such transfers by the clerk of the pleas. This measure was intended to save the people from the expense of making long journeys to Amboy or Burlington to record titles, but it injured

<sup>1</sup> *Laws Enacted in 1713* (Bradford print).

<sup>2</sup> Allinson, *op. cit.*

<sup>3</sup> *Ibid.*

the secretary of the province in spite of the provision that all titles recorded with him were to be legal as heretofore. "An Act for Enforcing the Observation of the Ordinance for Establishing Fees within this Province,"<sup>1</sup> not only enforced under penalty of £50 the said fees and no other, but also enacted that attorneys who split cases so as to obtain more actions or in any other way initiated unnecessary procedure, should have no more fees than for a single action.

All of these acts, except possibly that for "Shortening" lawsuits, seem to have been of a proper character, and indeed highly desirable after the gross abuses of Cornbury's time. But James Smith, the provincial secretary, finding that the emoluments of his office were greatly reduced by the law "shortening" lawsuits, that regarding deeds, and that enforcing the ordinance of fees, memorialized the lords of trade upon the subject.<sup>2</sup> The lords sought to obtain satisfaction for Smith from the assembly itself through Governor Burnet.<sup>3</sup> But when the representatives refused to restore the fees the acts in question were eventually disallowed by the Crown.<sup>4</sup> The action of the home authorities in thus deliberately sacrificing the well-matured desires of the colonial legislature to the plea of a single royal official seems, to say the least, most ill-advised.

The legislation discussed shows at the same time the interest taken by the assembly of the colony in the judicial system, and the extent to which it interfered with its work. The actual constitution of the courts was, however, always under the control of the governor

<sup>1</sup> Allinson, *op. cit.*

<sup>2</sup> *New Jersey Archives*, vol. xiv, p. 225.

<sup>3</sup> *Ibid.*, vol. xiv., p. 226.

<sup>4</sup> *Ibid.*, vol. xiv, p. 240.

alone. In 1714 Hunter issued a new ordinance for the establishment of the courts.<sup>1</sup> But its provisions were identical with those of the original ordinance of Cornbury and Mompesson, except on one or two matters of detail. This ordinance expressly forbade the county justices from trying cases in which title to land was concerned, a provision highly proper when one considers the political importance of the land question. It was also ordered that henceforth appeals should not be taken from the county courts to the supreme court unless they involved £20 instead of £10 as formerly. The office of the supreme court was to be kept in future by the clerk or his sufficient deputy at both Amboy and Burlington under penalty of deposition and such other fines as the law could inflict. This change was to remedy a grievance hotly advanced by the assembly in 1707. The only other changes were in the time of holding some of the sessions.

But there was one important change made in the courts by Hunter. This was with regard to the chancery. Being out of sympathy during the earlier part of his rule with most of the members of his council, Hunter asserted the power clearly given in his instructions to exercise the powers of chancellor alone.<sup>2</sup> Naturally his action was made one of the points of attacks by Coxe and the party of opposition.<sup>3</sup> But Hunter's course was approved by the home government and, although no new ordinance for the chancery was issued, the governor continued to act as chancellor till 1770. The

<sup>1</sup>Field, *Provincial Courts of New Jersey*, appendix D, p. 263. Hunter

change, however, undoubtedly made the chancery more unpopular.

Under Governor Burnet there were further changes, though not of a very sweeping character. In April, 1723, there was issued an ordinance for altering and regulating the times of the sitting of the courts.<sup>1</sup> This ordinance, however, embodied some of the provisions of the disallowed acts of 1713. It further led to a protest from the assembly, who represented that it still held the people of the province under the inconvenience of journeying from distant points to Amboy and Burlington for comparatively trifling matters.<sup>2</sup> The representatives desired leave to prepare a bill to remove the difficulties, but to this procedure the governor and council would not consent.<sup>3</sup> The latter nevertheless named a committee to look into the inconveniences involved.

A little later the assembly presented another address relating to the judicial system.<sup>4</sup> This address called the attention of the governor to the disadvantages of having a chief justice who did not reside in the province and laid emphasis upon the injustice of compelling persons to journey from remote parts of the Jerseys to New York for the sake of giving bail or obtaining a writ. The house immediately after voted that £100 extra should be paid to a chief justice who would ride the circuit.<sup>5</sup> This action by the representatives led to the superseding of Chief Justice Jamison by William Trent.

A further result was the issuing by Burnet of "An Ordinance of George II." reconstituting the courts.<sup>6</sup>

The new ordinance, of course, retained the leading provisions of those of 1704 and 1714. It, however, allowed appeals from the justices' court to the general sessions in all cases over ten shillings. It was also provided that any two judges of the supreme court (the chief justice always to be one) should have power to commission suitable persons in each county to receive bail from persons concerned in actions or suits before the Supreme Court. Such recognizance was then to be transmitted to some judge of the Supreme Court, and by him received upon payment of the usual fees. Further, the chief justice or other justice of the Supreme Court was every year to go into each county except Bergen and Cape May to try all cases coming before the Supreme Court, judgment to be given at the next Supreme Court held at Amboy or Burlington after such verdict as was given in the counties. The high sheriff, justices of the peace, the mayor and aldermen of any corporations within the county, and all officers of the court, were to attend the chief justice while within the county on penalty of prosecution.

The ordinance of 1724 was superseded by still another the next year.<sup>1</sup> This however was hardly more than a verbal repetition. The only important alteration was the extension of the circuit to all the counties but Cape May. In February, 1728, came the last ordinance of Burnet, and indeed of the union period for the constitution of the courts.<sup>2</sup> It was now ordained that henceforth there should be two supreme courts, one to sit at Amboy, the other at Burlington. That at Burlington was to meet in May, August, November and February, and that at Amboy in the same months but at different

<sup>1</sup> Field, *op. cit.*, appendix F, p. 281.

<sup>2</sup> *Ibid.*, appendix G, p. 292.

dates. The courts were to sit five days, but all trials and returns of juries were to be made only in the May and November terms. The August and February terms were to be for the returns of writs and for other law proceedings. Except for this important change the ordinance of 1728 followed that of 1724.

Governor Burnet was especially fond of his chancery jurisdiction, and in 1724 issued the first ordinance for the regulation of fees in chancery.<sup>1</sup> These fees are regarded by Judge Field as most liberal though at the time they seem to have caused complaint.<sup>2</sup> Governor Montgomerie, unlike his predecessor, was opposed to the chancery court, and avoided exercising his powers as chancellor whenever possible. Under him, in 1730, a committee of the council was appointed to revise and moderate the fees, so as to make them conformable to the circumstances of the province. The committee was also charged with examining into the abuses which had grown up in the practice of the court.<sup>3</sup> In due time it reported proposing certain amendments to the former ordinances intended to expedite the proceedings of the chancery and to cut down the expenses of suits. The result was the issuing of a new ordinance by the governor and council embodying the suggestions of the council.<sup>4</sup>

Under Burnet, Montgomerie and Cosby several laws were passed regarding judicial practice. But most of these offer to the historical student little of interest. Such were an act for preventing multiplicity of lawsuits



avoiding suits in law of 1728,<sup>1</sup> and an act prescribing the forms of declaration, the effect of the abjuration oath and affirmation instead of the forms hitherto required in such cases, etc.,<sup>2</sup> passed at the same session.

Three of these later laws may, however, receive a little more notice. In the last session under Burnet there was passed an act for preventing malicious prosecutions on indictments and other suits of the Crown and rectifying sundry abuses in the proceedings thereon.<sup>3</sup> This enacted that in all cases where persons tried on indictments were found innocent they should be discharged from all costs whatever, any usage to the contrary notwithstanding. It was also declared that where several persons were indicted for an offense and found guilty the costs should not be taxed against each severally but against all, and should not amount to more than the cost of the suit against one particular person. In the same session another act was passed "Concerning the Acknowledging and Registering Deeds and Conveyances of Land."<sup>4</sup> This statute contained all the chief provisions of the disallowed act of 1713 for the recording of deeds by the county clerks. It also contained provisions intended to prevent errors in the recording of proprietary lands. Another act for "the Shortening of Lawsuits and Regulating the practice and Practioners of the Law" was an effort, like the similar law of Hunter's time, to fix the time within which issues at law must be joined and trials held.<sup>5</sup> Both

<sup>1</sup> Allinson, *op. cit.* This law declared that all statutes in force in Great Britain regarding the limitation of actions should also be in force in the colony.

<sup>2</sup> *Ibid.* This last was a highly necessary act for further ease of the Quakers.

these laws were again disallowed by the Crown in November, 1731.

Finally, in 1733 under Cosby we have another act "for the better enforcing an Ordinance made for Establishing of Fees and for Regulating the Practice of the Law."<sup>1</sup> The object of this measure was to reduce the cost of cases by cutting down the fees where possible. It was even claimed that the act in several cases actually lowered the fees established by the ordinance. The act also made changes in the procedure of the courts which were believed by the opponents of the assembly to be in the interest of the debtor class and to entail hardship upon all creditors.<sup>2</sup> The law did contain, however, the wholesome provision that none should be admitted as attorneys who were not skilled in the law, having either served an apprenticeship of seven years to an able licensed attorney or studied law at least four years after becoming of age. In any case the measure did little harm, for it was disallowed by the Crown in 1735.<sup>3</sup>

It is thus to be seen that, in spite of its efforts, the assembly did not meet with complete success in its attempt to regulate the courts. The legislation of Hunter's time against the great abuses of Cornbury and his ring was undoubtedly salutary. But the credit for the inauguration and development of the judicial system must go to the wise policy of the executives. The elaboration of so excellent a system was certainly a meritorious work,

<sup>1</sup> *New Jersey Archives*, vol. v, p. 377.

though it was of course much simplified by the examples of neighboring colonies. But of more importance was the actual administration of justice through the courts. To this topic we must now turn our attention.

Nowhere perhaps was the influence of the several royal governors more directly shown than in their appointments to high judicial positions. The first chief justice of New Jersey was Roger Mompesson. Mompesson had been a lawyer of some eminence in England, having served as recorder of Southampton and as a member of two parliaments. He had arrived only a short time before in America, whither he had come "to ease his fortune of some of his father's debts he was unwarily engaged for." But though recommended by William Penn for high office in Pennsylvania, Mompesson was disappointed in obtaining advancement there. He was, however, soon made chief justice of both New York and New Jersey by Lord Cornbury, of whose father, the Earl of Clarendon, he had been a favorite.

Mompesson became Cornbury's chief adviser in all matters of law, and was soon made a member of the governor's council. In the high stations held by him his record is most discreditable, as under his guidance the courts became engines of an arbitrary tyranny. Mompesson did indeed render the province a service by the skill with which he constituted the courts. But aside from this, the best that can be said of him is that he acted rather as the subservient tool of Cornbury than on his own initiative, and that when brought to task under Lovelace and Hunter he showed himself somewhat less resolute than other members of Cornbury's ring.<sup>1</sup>

Of Mompesson's private life and character little is

<sup>1</sup> *New Jersey Archives*, vol. iii, p. 373; vol. iv, p. 70.

known. He became the son-in-law of William Pinhorne, the second judge, with whose later career his own was closely connected.<sup>1</sup>

William Pinhorne, unlike Mompesson was not bred to the law, but had originally been a merchant in New York. In that colony he had already taken a prominent part in public affairs. Pinhorne had been a member of Governor Sloughter's council when Leisler was executed, and continued to hold that position until 1698 when, on the overthrow of his party, he was suspended from his offices and found it wise to retire to New Jersey. In the latter province he was proprietor of an extensive estate between the Hackensack and Passaic Rivers at Snake Hill then known as Mount Pinhorne. Like Mompesson he was a member of Lord Cornbury's council,<sup>2</sup> and seems to have been equally guilty with the other members of maladministration. As a judge he was no better than Mompesson, and was guilty especially of denying the writ of habeas corpus to Thomas Gordon, the speaker of the assembly.<sup>3</sup>

The first attorney-general of the royal province was Alexander Griffith, "that vile fellow Griffith," as Hunter termed him,<sup>4</sup> who is remembered chiefly for the campaign of prosecutions upon information which he directed against all who opposed Cornbury. The clerk of the Supreme Court was Jeremiah Basse, secretary of the province whose career calls for no further description here.

<sup>1</sup>Field, *Provincial Courts of New Jersey*, pp. 56-61; *New Jersey Archives*, vol. iii, p. 116 (note 2).

Upon the arrival of Lovelace, Mompesson voluntarily retired, and was succeeded as chief justice by Thomas Gordon, the very man who had suffered most severely from the tyranny of the courts. Gordon's power was not for long, however, as upon the death of Lovelace and the accession of Ingoldsby, Mompesson and Pinhorne were restored to power.<sup>1</sup>

But the arrival of Hunter meant a permanent change in the personnel of the courts. Hunter's selection for the post of chief justice was David Jamison, a Scot by birth and a resident of New York, where he was recognized as an able lawyer. He had been clerk of the council of New York under Fletcher, but was removed by Bellomont, who made against him astonishing charges of atheism and bigamy. Later, however, Jamison was restored to his office by Bellomont himself, and in 1699 was one of the vestry of Trinity Church. The new chief justice of the Jerseys had distinguished himself by his brave defense of McKemie, the Presbyterian clergyman, against Cornbury, and the only serious objection to his appointment was that he remained a resident of New York. Jamison's administration of the courts seems to have been both capable and upright. After his retirement under Burnet, he held the important post of attorney general of New York.<sup>2</sup>

The associate justice was Thomas Farmar, who had previously held the post of collector of the customs at Perth Amboy, whither he had removed from Staten Island in 1711. Farmar was during several assemblies the representative of Middlesex in the assembly and had

<sup>1</sup> *New Jersey Archives*, vol. iii, p. 500.

<sup>2</sup> Field, *op. cit.*, p. 91 *et seq.*; Whitehead, *Contributions to the Early History of Perth Amboy*, pp. 38, 40.

taken an active part in the proceedings as a member of the proprietary party. He continued to act as representative while on the bench. Farmar held the post of second judge for many years, and eventually in 1728 became chief justice. He was superseded, however, in 1729, possibly because of the insanity from which he is known to have suffered before his death.<sup>1</sup> Farmar's son, under the name of Christopher Billop, was the prominent leader of the loyalists in Staten Island and vicinity during the Revolution.<sup>2</sup>

In 1713, upon the suspension of Griffith from the attorney-generalship, Thomas Gordon was named by Hunter as "commissioner" for executing that office. In the first year of George I he was regularly commissioned as attorney general. In 1719, while his old enemy Hunter was still in power, Jeremiah Basse received the governor's commission for the office, and closed his checkered career by respectable service to the province.

The appointees of Hunter remained in office during the earlier part of Burnet's administration.<sup>3</sup> But in 1723 the eighth assembly addressed Burnet to name a chief justice resident in the province, and who would ride the circuit. This address, however, contained no complaint against Jamison's administration of the post. The governor wisely decided to gratify the assembly, and appointed as chief justice William Trent, at that time speaker. Trent, like Farmar, was not a lawyer by profession. He was a native of Inverness, Scotland, but

had long been a resident of Philadelphia, where he had been a most successful merchant. For many years he had been judge of the supreme court of Pennsylvania and speaker of the assembly, so that he had had long judicial experience. In 1714 he purchased Mahlon Stacy's plantation of eight hundred acres on the Assanpink Creek, where the city of Trenton now stands, and soon became a resident of New Jersey. In 1721 he was elected as representative to the assembly from Burlington County, and in 1723 was chosen speaker. William Trent did not live, however, to enjoy the post of chief justice long, as he died in 1724, only a few months after taking his seat. The terms of respect with which he is always mentioned by his contemporaries indicate that he was a man of high character and strong personality, and that his death was a distinct loss.<sup>1</sup>

His successor was Robert Lettice Hooper, who had also been prominent in the assembly, though he had taken no leading part in the politics of the colony.<sup>2</sup> Hooper's reputation was made in his judicial office, as his administration was creditable and satisfactory, though unmarked by striking occurrences. He presided, however, over the trial of the highly important Schuyler case in 1733, in which a notable victory was won for the associates of Elizabethtown against the proprietors. Hooper continued as chief justice during the remainder of the union period. His tenure was, however, interrupted in 1728 by the appointment of Thomas Farmar as his successor. Why Burnet took this peculiar step is not known. In the very next year Hooper was restored.<sup>3</sup>

In 1734, under Cosby, another notable appointment was made. This was that of Col. Daniel Coxe as second judge.<sup>1</sup> Like Basse this leader of the opposition to Hunter had at length made his peace with the chief executive. Coxe had resumed a prominent place in the affairs of the colony under Burnet and had, in spite of his bad reputation as a supporter of Cornbury, shown himself worthy of further trust. His record on the bench was creditable.

The successors of Basse as attorney-general were James Alexander, whose notable career is elsewhere described, Lawrence Smyth and Joseph Worrell.

The examination of the provincial courts of New Jersey in action is certainly one of the most instructive chapters in the political history of the colony. We are to consider in this field a condition of things so different from that of our own time as to be realized only by some effort of the historical imagination. Yet an understanding of this topic is essential to a knowledge of the true political issues of the province.

The courts under Cornbury were undoubtedly engines of despotism. Even after this lapse of time no milder term could be justified. The complete control by the executive over the judicial system, arising especially from the power of the governor to appoint the judges and justices, made it difficult indeed for the people of the province to meet this species of oppression. Of all the powerful weapons in the hands of the corrupt governor and his clique this control over the courts was perhaps the most effective and was employed with the most complete lack of scruple.

Nor did this aspect of the courts take long in develop-

<sup>1</sup>Field, *op. cit.*, p. 132 *et seq.*



ing. The first session of the Supreme Court which was held at Burlington in November, 1704, was indeed not productive of important results. The chief justice and the second judge took their seats and a grand jury was returned by the sheriff of Burlington County, but no indictments were found and no civil suits were ready for trial. The chief business was the admission of several attorneys, among whom were John Moore, May Bickley and Thomas Gordon.<sup>1</sup>

But in the May term of 1704, held also irregularly it would appear at Burlington, the courts began their interference in politics. Much bitterness and criticism had naturally been aroused by the governor's attitude toward the first assembly, and the governor's henchmen on the bench at once made the courts the upholders of his excellency's conduct. Three rather well-known persons were arraigned before the grand jury for uttering seditious words regarding Cornbury. These were John Hollingshead of Rancocas Creek, one of the earliest settlers in Burlington County, Walter Pumphrey of Burlington Town, and Jedediah Allen of Shrewsbury, Monmouth County, himself a member of the first assembly.<sup>2</sup> Hollingshead was accused of declaring "that the governor had dissolved the assembly, but that they could get another just as good, and if the governor liked them not, he might go whence he came." Allen had made the heinous assertion "that Col. Morris was dismissed from being of the council by my Lord, but that it was more than my Lord had power to Doe."<sup>3</sup> But the grand jury in spite of these terrible charges bravely refused to find indictments. The governor and his

clique, however, were not to be thus balked, and accordingly the attorney general was instructed to apply to the court for leave to file informations. This permission was at once given and the informations drawn up.<sup>1</sup>

The defendants all pleaded not guilty. Hollingshead, whose case was the first to come up, moved to postpone his trial until the following term. This was allowed, providing he would put in an issuable plea, thus admitting the sufficiency of the information. The court, therefore, ordered that he should enter into a recognizance to appear at the next term to put in an issuable plea, and to keep the peace meanwhile. But Hollingshead refused to do this, and the court then committed him for contempt and "for abusing the witnesses of her Majesty." At the next term Hollingshead was tried and acquitted, but the court refused to discharge him until he had paid all the costs.<sup>2</sup> He was accordingly continued on recognizance till next term, and this was regularly renewed until the May term of 1707, when he was at length discharged.<sup>3</sup>

Walter Pumphrey adopted a bolder course, agreeing to go to trial at once. He would, however, neither employ counsel nor submit any evidence. The jury was therefore obliged to bring him in guilty, but the court nevertheless did not pronounce judgment, doubtless fearing popular indignation. Pumphrey was instead put on recognizance to appear from term to term, and after several renewals forfeited his recognizance, as Field believes with the understanding that no further proceedings would be brought.<sup>4</sup>

<sup>1</sup> Field, *Provincial Courts of New Jersey*, p. 54. Field bases his ac-

The case of Allen apparently never came to trial. But after the court had caused him all the annoyance and expense possible the proceedings were discontinued.<sup>1</sup>

These three cases were an ominous beginning of the work of the royal courts. For a brief space there appears to have been a suspension of hostilities. But it was not for long. In the May term of 1707, Thomas Killingworth, of Salem, was tried upon two informations for speaking slanderously against the Church of England, declaring it "a carnal church," and using other unseemly words. He was, however, acquitted.<sup>2</sup>

As the struggle between Cornbury's ring and the proprietary leaders became intensified, the servile courts grew more active. Informations were filed upon various pretexts against many of those prominent in the proprietary interest. Capt. Harrison, Dr. Johnstone, and George Willocks, were thus prosecuted for "slanderous words against the chief justice." George Willocks, John Pike, and John Barclay, were accused of publishing a "libel" called "Forget and Forgive."<sup>3</sup> An information was brought against Thomas Gardiner for pretending to act as surveyor general of West Jersey without authority. Richard Wildgoose and seven other ex-constables of Burlington County were prosecuted for failure to make distresses on the Quakers under the militia act of 1704.<sup>3</sup>

But the court had learned from its experience, and in conducting these cases made no effort to bring them to trial or to secure convictions. The object of the confederates was to inflict punishment upon the opponents of

their policy of corruption by putting them on recognizance, and then spinning out their cases and compelling them to incur the trouble and expense of hiring counsel and making journeys to attend the court.<sup>1</sup> It is this aspect of the matter which makes the conduct of Mompasson, Pinhorne, Griffith, and the other judges and court officers so entirely unjustifiable.

The court also used its power over attorneys to intimidate the practitioners of the law from opposing the governor or the chief justice. When Capt. Harrison was under prosecution in 1708 he was obliged to move that counsel be obliged to plead for him as he had offered fees and none dared accept. Emmet and Regnier, the latter a hanger-on of the ring and clerk of the court, were ordered to represent him. The case finally went to the jury and he was acquitted.<sup>2</sup> It is, indeed, a matter of much credit to the province that no jury, so far as the records of the Supreme Court show, ever brought in a verdict of guilty against a person on trial for contempt of the government under Cornbury unless the unavoidable verdict against Pumphrey be regarded as an exception.<sup>3</sup>

Somewhat similar to the experience of Harrison was that of Thomas Turnbull who was accused of slandering Cornbury and whose case came up soon after. Turnbull also found it impossible to secure counsel. The court assigned him Jacob Regnier, who advised him to plead guilty and ask for mercy.<sup>4</sup> When he did so he was ordered to go to Cornbury and beg his pardon and then

But perhaps the proceedings in which the political motives of the judicial officers were most clearly exhibited were those against Thomas Gordon, the prominent proprietary leader. As is shown more fully elsewhere, he was in 1703 commissioned as register by the proprietors of East Jersey. Cornbury, however, demanded as a part of his campaign against the proprietors that the records should be handed over to Basse, the secretary of the province. The order was served upon Gordon at Shrewsbury, but Gordon declined to answer it directly, stating that the records were at Amboy. He was, therefore, at once arrested by the order of Andrew Bowne, a member of the council, and was held on excessive bail to answer before Cornbury and council in the following October. Before the council Gordon was much abused by Cornbury, but after various negotiations the records were finally delivered to Basse.<sup>1</sup>

In February, 1706, writs were again issued for the apprehension of Gordon and he gave bail to appear before the supreme court. But soon afterward he was suspended by the court from practicing as an attorney without reason being entered. Even when in May, 1708, he appeared before the supreme court and was discharged, "nothing appearing against him," he was not restored to his position.<sup>2</sup> At this point he was elected speaker of the third assembly, in the room of Samuel Jennings, who was ill, and bravely carried on the campaign against the governor which Morris and Jennings had so ably begun.<sup>3</sup>

As a result he was arrested on the warrant of Corn-

bury himself, within half an hour after the adjournment of the assembly upon the same old charge. Gordon promptly applied for a writ of habeas corpus, but this was denied by Judge Pinhorne. The pretext was that such application must be made by counsel-at-law. Gordon was thereupon kept in prison for fifteen hours to his great discomfort and injury. At length he succeeded in engaging Capt. John Pinhorne, son of the judge, to act as his counsel, and paid him the required fees, though Gordon himself drew the writs. He thus secured his liberty upon bail, but was, of course, obliged to attend the next supreme court. Here he was again discharged. But though thus apparently cleared, his suspension from practicing law was not removed until the arrival of Lovelace.<sup>1</sup>

Another case of miscarriage of justice, which attracted much attention, was that of Peter Blacksfield. This proceeding appears to have been equally outrageous, though the motive back of it was not so evidently political. It appears that the said Blacksfield gave security for the appearance of one William Slooby, of Salem County, who was on trial before the Supreme Court for piracy, and Slooby failing to appear in the fall term of 1705, judgment was given against him by default and his recognizance forfeited. Blacksfield was thus ruined. But the parties involved maintained, apparently with truth, that no proper notice had been given Slooby that his appearance was required. Blacksfield, after further efforts to secure justice from the Supreme Court, endeavored to appeal to

appeal, and the erroneous decision therefore stood until the case was revived under other conditions.<sup>1</sup>

Such tyrannical conduct was not, however, confined to the superior tribunals. Among those who suffered most in the county courts were no doubt the Quakers, who, in spite of the manifest intention of the royal instructions to have them put on an equality with other residents of the province, were excluded both from serving on juries and from giving evidence unless it suited the purpose of Cornbury's judges.<sup>2</sup>

But of all the corrupt persons who presided over justice in the local courts it was undoubtedly Peter Sonmans who caused the most complaints. A long list of charges was drawn up against his conduct as councilor and justice by the assembly under Lovelace, the greater part of which related to abuses of justice.<sup>3</sup> Sonmans was accused of obtaining the arrest of John Barclay just as he was coming out of the church from the celebration of the sacrament, an act directly contrary to law. He was said to have forcibly seized the horse of one John Brown without assigning reason, and later to have caused Brown to be imprisoned for no offense. One Mellin, a tailor, was forced by him to flee from the province because of a trivial and unjust charge made against him. Sonmans had refused to bind one Alexander Walker to keep the peace, although he had beaten his wife and threatened to murder his son-in-law. He had tried to browbeat and intimidate sheriffs and other officers. Worse than all, Sonmans had endeavored to pack juries, especially that before which John Harrison

was to be tried upon an information. He offered in this case to secure eleven Dutch men who would "give little trouble." He was in addition accused of preventing those impaneled to serve on the grand jury of Middlesex and Somerset from meeting, and then fining them for not doing so.

Sonmans, who "did not lack abilities," answered most of these charges in a statement to Lord Lovelace in a manner plausible, though not convincing.<sup>1</sup> The charges, however, are themselves so gross that the student can hardly accept them from Sonmans' bitter enemies as being absolutely true. Making all due allowance, nevertheless, for the motives of the assembly, we must conclude that Sonmans had undoubtedly greatly abused his powers.

A sudden stop was, of course, put to the corruption and injustice of the courts by the advent of Lovelace as Cornbury's successor. With Thomas Gordon, Lovelace's appointee as chief justice, the proprietary interest now felt itself strong enough to retaliate upon Cornbury's faction through the courts. Not only were Willocks and Barclay, who were still under prosecution, promptly released, but indictments were found by grand juries against Peter Sonmans and Jeremiah Basse, the secretary who had again been guilty of many irregularities. Sonmans was indicted for perjury and adultery, while Basse was charged with perjury and forgery. Under the circumstances, both of these worthies seemed sure of conviction.<sup>2</sup>

As we have seen elsewhere, a determined attack was



Mompesson, Sonmans and other creatures of the late governor, in which the abuses of the courts were to some extent exposed.

But the sudden death of Lord Lovelace saved the guilty parties for the time being. Ingoldsby promptly reappointed Mompesson in place of the long-suffering Gordon, and the old ring was restored to power. The immediate result was, of course, the clearing of both Basse and Sonmans, who were tried before juries which had been carefully packed in the fall term of 1709,<sup>1</sup> and the spring term of 1710 respectively.<sup>2</sup> The opponents of the government evidently recognized the uselessness of the attempt to punish Sonmans, as no evidences at all were offered against him. The party in power nevertheless retaliated by causing an information to be filed against Sonmans' rival, John Barclay, charging him with altering the records of the province. But he was not brought to immediate trial.<sup>3</sup>

Though the conduct of the Supreme Court was not so tyrannical under Ingoldsby as under Cornbury, many of the old abuses were revived, Basse especially being accused of drawing up excessive bills of costs, of packing juries, and of other offences.<sup>4</sup> But public indignation seems to have been especially directed against William Hall, a member of the council, and judge of the pleas of Salem. Hall was likewise accused of charging excessive fees. But the more serious charge was made that he had coerced certain persons of humble condition into binding themselves as indentured servants to his friends. Thus he was said to have forced Thomas Bartlett to bind himself

<sup>1</sup> *Minutes of the Supreme Court*, 1709, p. 75.

to Simon Morgan and afterward to have threatened one Francis Godbolt and his wife with prosecution for burglary, unless they likewise indentured themselves. Godbolt was willing to bind himself but not his wife, but the justice was not satisfied and since they confessed their guilt committed them. Later, Hall was accused of selling ✓ Godbolt aboard a New England sloop, while retaining his wife as a servant. It was also said that Hall had taken possession of flour belonging to John Reeve, for which he refused to account.<sup>1</sup>

Ingoldsby and his friends, however, did not have entire control of the fifth assembly, although it was in several respects favorable to them. This body received a petition from Peter Blacksfield, praying for the long-delayed justice.<sup>2</sup> After an investigation the assembly came to the conclusion that the judgment of the court was an error and prepared a bill setting it aside and restoring Blacksfield to his estate.<sup>3</sup> Naturally, however, this bill did not pass the council.<sup>4</sup>

Robert Hunter was not the man to tolerate such a condition of things as he found in the judicial system of the Jerseys. Yet, just as in the other departments, it cost him a hard struggle to remove the abuses. The same ring which was intrenched in his council was intrenched in the courts, and though he at once superseded Mompesson by Jamison, and Pinhorne by Col. Farmar, he did not thereby gain complete control. Attorney-General Griffith and Secretary Basse, as well as the clique in the council still remained.

of Peter Blacksfield was heard on appeal, in spite of the fact that a majority of the council were still of Cornbury's party.<sup>1</sup> Blacksfield was represented by Gordon as counsel, and the attorney general was obliged to confess the errors, which he excused on the ground that the case had been agitated during his sickness. The decision was then reversed, and Blacksfield triumphantly restored to his estate. In the fall term of the Supreme Court for 1711 Barclay was also tried and acquitted.

But this was a mere beginning of the political conflict in the courts. In the fall term of the Court for 1715, held at Burlington, a grand jury was summoned with Peter Fretwell, the well-known Quaker, as foreman. Thereupon Basse, the clerk, absolutely refused to allow him to qualify by affirmation, taking the ground that an act of parliament of the first year of George I had extended to America the act of the 7th and 8th of William which excluded Quakers from serving on juries and thereby repealed the provincial statute in their favor. The stand of the clerk was, of course, an attempt to keep the Quaker interest in West Jersey from obtaining recognition in the courts. As Basse, however, continued his refusal to obey the law of the province, he was declared in contempt and was directed by the court to name another to qualify the jury. He was also fined £20.<sup>2</sup>

The struggle was now on, and the growing popular strength of the party of Coxe encouraged them to force the issue. Accordingly, in the spring of 1716, the grand jury of Burlington found an indictment against chief justice Jamison for violating the act of parliament of the

first of George I by admitting a Quaker as juryman.<sup>1</sup> A similar indictment was found against Lewis Morris for admitting Quakers while acting as justice at the quarter sessions for Burlington.<sup>2</sup> In reply to this step, however, Hunter issued an address to the public, which was virtually a proclamation declaring that the act of the assembly in favor of the Quakers was still in force. In the May term of 1716 Jamison delivered a speech to the court, in which he vindicated his position, and the court with Farmar, the second judge, presiding, then ordered the indictment quashed on the ground that it had been found against the chief justice for doing his duty.<sup>3</sup>

The court then turned upon the now helpless Basse and ordered that, since he had been "instrumental in sowing discord and sedition among divers of his Majesty's subjects within this province" and had aided especially in procuring the indictments, he should be forthwith suspended from practicing both in the Supreme Court and in all other courts in the province.<sup>4</sup> This blow fell at about the same time as the rout of Coxe and his followers in the assembly and the resulting overthrow of their party in the province.

The victory of the governor was now won. Griffith had some time before been suspended from the attorney-generalship,<sup>5</sup> and a politician like Basse was not the man to continue a hopeless struggle against those who controlled the patronage. When, shortly afterward chosen a representative from Cape May, he became completely

<sup>1</sup> *New Jersey Archives*, vol. iv, p. 236.

<sup>2</sup> *Ibid.*, vol. iv, p. 239. Gordon the attorney-general was also indicted for calling the act of parliament "a billiard."

reconciled with Hunter and lived to fill the attorney-generalship itself under both Hunter and Burnet.

It must be admitted that Hunter used his control of the courts to good advantage. It is of course true that his appointees, Jamison and Farmar, were favorable to the proprietary interests and that while they were in office the opponents of the proprietary claims had little chance of success in legal proceedings. It is also true that the courts continued to be not unwilling to aid the governor by using their powers against political offenders. But, beginning with the ousting of Basse, the courts of the province certainly became respectable. Bribery and corruption on any large scale ceased. The persons named by Hunter and his successors to judicial office were men of recognized standing and attainments. The courts henceforth rendered substantial justice and soon won the confidence of the people. The most gratefully remembered names of the latter part of the union period, William Trent, James Alexander, and John Kinsey, Jr., are those of persons prominently connected with the judicial system. In thus rescuing the courts Hunter performed one of the greatest of his many services to New Jersey.

But when the courts turn their attention away from the conflicts of factions and occupy themselves with giving private justice, they become less interesting to the student of political history. During the remainder of the union period we find ourselves chiefly attracted by the trial of certain officers accused of misconduct in office. But in most of these cases the disinterested character of the courts is illustrated.

The first important effort to bring a public officer to justice through the courts was in the case of Peter Fauconnier, Cornbury's receiver-general. It will be remem-

bered how Cornbury had refused to allow the General Assembly to examine his vouchers, thus nullifying their attempts to audit his accounts, and how in various ways he had escaped a reckoning under Lovelace and Ingoldsby. Hunter, upon application from the assembly, however, submitted all the evidence relating to Fauconnier's administration. But the house after examination found the accounts unsatisfactory, and addressed Hunter to have Fauconnier prosecuted.<sup>1</sup> The governor caused proceedings against him to be begun immediately. In the spring term of 1711 his arrest was ordered by the Supreme Court, and the case was pushed as rapidly as was possible, with such an obstacle as Griffith in the attorney-generalship. Fauconnier entered a demurrer against the jurisdiction of the court, thus raising a point of the utmost importance for the province. In August, 1713, argument upon the demurrer by counsel on both sides was heard at length by the court, and judgment was given for the Crown.<sup>2</sup> Thus the accountability of royal officers to the provincial courts was established. But though the proceedings against Fauconnier were continued, no final judgment against him appears to have been gained. It is probable that the object of the prosecution was to establish his accountability and not actually to punish him. The assembly seems to have been satisfied by the result.<sup>3</sup>

Another semi-political prosecution of the period was that of Daniel Leeds, the former surveyor-general of West Jersey, who had rendered himself obnoxious be-

<sup>1</sup> *Assembly Journal*, Jan. 25, 1710-11.

<sup>2</sup> *Minutes of the Supreme Court (1704-1715)*, p. 131.

cause of his connection with Cornbury and Coxe, and his antagonism to the Quaker interest in his division. His prosecution was ordered by the council on the ground that he had altered the book of surveys of West Jersey.<sup>1</sup> In 1716 he was tried before the Supreme Court at Burlington, but found not guilty.<sup>2</sup>

In the well-known case of Thomas Gordon, treasurer of the province under Hunter, the court appears to similar good advantage. It has been previously stated that in 1718 Gordon's accounts were found by the assembly to be unsatisfactory and he was accordingly allowed to resign from the treasurership. Considerable controversy resulted between the council and the house, the council believing that the lower house had been unjust.<sup>3</sup> But the eighth assembly of 1721-2, after another examination, declared that Gordon was indebted to the sum of £1070 8s. 7d.<sup>4</sup> At the next session of 1723 the house actually prepared a bill for compelling the estate of Gordon, now deceased, to make good to the province all sums due.<sup>5</sup> But the governor and council refused to allow this mode of procedure, pointing out that the proper method was through the courts. The house, making a virtue of necessity, consented, and legal proceedings were begun by the attorney general.<sup>6</sup>

The case came up in the fall term of 1727, and the court proceeded to appoint a competent committee of auditors to audit the estate and accounts of Gordon.

<sup>1</sup> *New Jersey Archives*, vol. xiii, p. 563.

<sup>2</sup> *Minutes of the Supreme Court* (Burlington, 1716-1731), pp. 4, 8. He was, however, reindicted and continued on his recognizance.

<sup>3</sup> *New Jersey Archives*, vol. xiv, pp. 119-126.

The committee did this with all care, and revealed the fact that, while the accounts had been kept with apparent honesty of purpose, they contained certain errors due to the difference between proclamation money and sterling valuation. It was found that the total sum due was only £17 7s. 2d. The court confirmed the report, and the estate promptly paid the amount due to the treasurer. Thus the difficulty was happily settled, and the memory of Thomas Gordon vindicated.<sup>1</sup>

The last public prosecution of the union period of great political interest was that of Peter Sonmans, who under Burnet ventured to return to the province and to exercise his invalid commission as receiver general of the proprietary quit-rents. For so doing he was by order of the council prosecuted by the attorney general upon information.<sup>2</sup> The many enemies of Sonmans greatly desired his condemnation, and the evidence against him was so well established as to give little apparent chance for his escape.<sup>3</sup> But Sonmans was always a hard man to bring to justice. His case came to trial in November of 1728, and seems to have called forth more show of legal learning, both on the part of the attorney general and of the defendant, than nearly any other trial of the period.<sup>4</sup> But the jury did not convict Sonmans directly, finding a special verdict. Sonmans was continued on his recognizance, and the proceedings against him were kept up until about 1732, when they appear to have been dropped. Thus he escaped serious damage. At the

<sup>1</sup> *Minutes of the Supreme Court* (Perth Amboy, 1714-1731), p. 131.

<sup>2</sup> *New Jersey Archives*, vol. xiv, p. 317.

<sup>3</sup> *Ibid.*, vol. xiv, pp. 311-313, 315, 317.

<sup>4</sup> *Minutes of the Supreme Court* (Perth Amboy, 1714-1731), p. 143; *New Jersey Archives*, vol. v, p. 202.



same time, however, his enemies had effectually eliminated him as a force dangerous to the government and the proprietors. His difficulties were also increased by the bringing of sundry ejectment suits against him, in several of which he was worsted.<sup>1</sup> But in spite of all he was able to secure an election to the general assembly and to take a rather prominent part there.

Aside from these political cases, interest is given to the proceedings of the courts during the latter half of the union period through certain important cases relating to the Elizabethtown tract. This issue was, after all, the most vital in the entire history of the province as the results of the cases clearly showed. When Hunter assumed the administration of the province he declared as one of his guiding principles, that questions of land title should be left to the courts.<sup>2</sup> Accordingly, in the November term of the Supreme Court in 1714, a test case turning upon the validity of the proprietors' title to the Elizabethtown purchase was brought in the name of Jacob Daniel on the demise of Edward Vaughan against Joseph Woodruff.<sup>3</sup> Vaughan held of the proprietors and Woodruff by the "Clinker Lot" survey. The case came to trial in the spring term of the next year, but the jury returned a special verdict. This was several times argued, but finally, on May 17, 1718, the court gave judgment for Daniel and awarded him a writ of possession.<sup>4</sup> The brief record seems to show that the case was fully and fairly heard, although perhaps no other outcome was possible with Chief Justice Jamison presiding as an appointee of his fellow

Scot, Hunter, the staunch friend of the proprietors. At any rate the proprietors' title to the Elizabethtown tract was established, and the province rested for a time in the decision.

But the matter did not rest here permanently. It seems not improbable that the movement in the assembly which resulted in the removal of Jamison as chief justice involved some feeling against the proprietors. At any rate, with the more disinterested Burnet as governor, and Robert Lettice Hooper on the bench, the proprietary control of the courts was not so assured. As we shall see elsewhere, there was an interesting and active revival of the old anti-proprietary feeling in East Jersey in Burnet's time. The proprietors, therefore, desiring to clinch their claims to the Elizabethtown tract, brought, in 1730, sundry ejectment suits in the name of Patrick Lithegow, on the demise of Peter Schuyler, against several persons who had acquired lands within the Elizabethtown tract by the "Clinker Lot" right. The defendants were John Robinson, Henry Clark, Andrew Craig, Joshua Marsh, and others.<sup>1</sup>

These cases were undoubtedly watched with the greatest interest by all concerned in the politics of East Jersey. The best counsel obtainable was employed; Murray and James Alexander, the authors of the Bill in Chancery, for Lithegow, and John Kinsey, the political leader, and Smith, for the defendants. The trial finally came on May 17 and 18, 1733, before Chief Justice Hooper in person.<sup>2</sup> The minutes of the Supreme Court unfortunately do not give the argument; they do, how-

<sup>1</sup> *Elizabethtown Bill in Chancery*, p. 47.

<sup>2</sup> *Minutes of the Supreme Court* (Perth Amboy, 1732-1738), pp. 173-178.

ever, show that the hearing was continued "at above nineteen hours," and that the chief justice summed up the evidence "at five of the clock in the morning." These things are proof of the great and unusual importance of the issue. On the next day the jury brought in a verdict in favor of the defendant.

Thus was won a legal victory which brought about an immediate revival of the demands of the original Elizabethtown purchasers. The development of this movement brought with it most important results in the political field, and was destined soon to disturb once more the tranquillity of the province. The full significance of the decision will, however, be shown in detail in the chapter upon the proprietorship. It is our purpose here merely to indicate the importance of the work of the courts in determining the questions of land title which had been so long pending.

It remains under this topic merely to state a few general facts not brought out by a discussion of important cases. In the first place any student must be impressed by the great number of legal cases and proceedings carried on before the courts. The number is certainly remarkable for so young a colony as New Jersey, and undoubtedly indicates that in default of other excitement litigation was one of the diversions of the colonists, though a troublesome and expensive one.<sup>1</sup> But many of the cases were ejectment suits, showing how defective the system of apportioning land was, and to what extent there had been frauds and other ill practices. Fairness requires it to be said, however, that nearly all the land suits were in East Jersey.

In the second place, it has already been indicated that

<sup>1</sup> Field, *Provincial Courts of New Jersey*, p. 21.

in the early practice of the courts there were many irregularities and peculiarities.<sup>1</sup> Under Cornbury justices of the peace appear as sitting in the Supreme Court, their names being regularly entered on the minutes. In the trial of the first person indicted for murder, which took place in Gloucester, Cornbury in person presided over the court, just as the king was supposed to sit in King's Bench. It has also been shown that the Supreme Court tried many criminal cases on indictments brought by grand juries, which were returned by the sheriff of the county in which the court sat. This practice was of course perfectly regular, though odd from the modern point of view. But the Supreme Court had, of course, no such number of cases brought up on appeal as at the present day.

A word may be said too as to the work of the council as the highest provincial court. Although there were so many legal proceedings, not many cases were carried up on appeal to the council. Under Cornbury it appears that the council in some cases refused to receive appeals brought in an entirely legal manner. The fact that so many of its members were serving as judges also went far toward nullifying the right of appeal, as even if the judges of the lower courts did not vote on the decision of cases carried up from their own tribunals the clique spirit was strong among Cornbury's henchmen. Moreover, a quorum of the council might not be left to vote.<sup>2</sup> But even after the ousting of Cornbury's clique the number of appeals was small. It is probable that not many of the cases heard in the lower courts were of the value of the £200 required for appeal.

Aside from the case of Peter Blackfield already mentioned, the case of most historical importance brought before the council was that of Jacob Daniel on the demise of Edward Vaughan *vs.* Joseph Woodruff. On the decision of this case by the Supreme Court in 1718, declaring against the Elizabethtown title, Woodruff appealed. The proceedings in error began before Hunter and council, in March, 1719,<sup>1</sup> and were spun out during the administration of Burnet until August, 1725,<sup>2</sup> when there was at length a rehearing. But the council took no further action, and the proceedings were thereupon discontinued. The decision for the proprietors therefore stood.<sup>3</sup>

Until late in the period the chief connection of the council with the actual work of the courts was therefore through its administrative and police powers;—its work in ordering the prosecution of delinquent officials and the arrest and trial of persons dangerous to the public peace.

If appeals to the council were somewhat rare, those to the king in council were scarcer still. During the union period, so far as the existing council record shows, there was but one appeal to England.<sup>4</sup> The appeal of the celebrated case of Jones *vs.* Fullerton in the latter part of the proprietary period will, however, be remembered.

<sup>1</sup> *New Jersey Archives*, vol. xiv, p. 112.    <sup>2</sup> *Ibid.*, vol. xiv, p. 299.

<sup>3</sup> No other result was possible with such a strong proprietary influence in the council.

<sup>4</sup> *New Jersey Archives*, vol. xiv, p. 519. The appeal was made in eight cases at the same time. These were ejectment cases involving the claims of Col. Coxe in Hunterdon County.

## CHAPTER XXIV

### FINANCIAL AFFAIRS

THE chief source of expense under the provincial government was usually the payment of salaries. This item was always the all-important part of the bills "for support of the government." The first assembly of 1703 offered to raise by taxation £1,000 for the government and £300 for representatives' fees and incidental charges, the grant to run for one year only.<sup>1</sup> But Cornbury rejected so small an amount by adjourning the assembly. At the second session held the next year the assembly proved slightly more liberal, offering £1,500 for one year and £1,000 for the next two following.<sup>2</sup> But these amounts were equally unacceptable to his excellency.

The second assembly, in which it will be remembered the supporters of Cornbury were for a time in the majority, was more ready to "answer the ends of government." It passed a bill appropriating £2,000 "current money of the Eastern Division" for "support" for two years.<sup>3</sup> The assembly does not appear to have specified in any way how the sum granted was to be distributed. The accounts of Peter Fauconnier, the receiver-general, show, however, that the governor received

general £100. The secretary was given £30 and as clerk of the council £50, with £20 for contingencies; the clerk of the assembly had £50 with £20 for contingencies. £50 went to the printer, and £30 to the door-keeper of each of the houses. But the most interesting payments were £180 for the governor's house rent, "etc.," and £260 per annum for the receiver-general. Fauconnier also presumed to pay to Cornbury £61 9s 1d as part of his salary for a third year in spite of the time limitations of the act.<sup>1</sup> This was one of the offenses for which he was later prosecuted.<sup>2</sup>

The revenue bill was eventually disallowed by the home government, certainly a rather unusual proceeding.<sup>3</sup> It had, however, already been carried into effect. In April, 1705, the Lords wrote to Cornbury stating that they deemed £1,500 for the first year and £1,000 for the succeeding years sufficient. £400 was to be for the governor's salary and traveling charges, £200 for the lieutenant-governor, and the rest for the contingent charges of the government. The Lords desired that such a grant be made for at least eleven years.<sup>4</sup> By this communication Cornbury was evidently surprised and shocked. He nevertheless answered dutifully that he would readily yield as to his own salary.<sup>5</sup> He would willingly submit all his private concerns to the queen. She had always allowed him £500 for New Jersey, however, as a salary and for traveling expenses. "Traveling," he reminded

<sup>1</sup> *New Jersey Archives*, vol. iii, pp. 352-5.

<sup>2</sup> *Assembly Journal*, Jan. 25, 1710-11.

<sup>3</sup> So stated in Allinson, *Statutes of New Jersey*. But the statement may refer to the expression of general disapproval by the Lords mentioned below.

the Lords, was very dear in America. Cornbury also felt that £400 would not settle the contingent charges of the government. Out of it must come the salaries of the collectors, of the chief justice, of the attorney-general, and of the secretary, besides other charges. If the salaries were to be equivalent to those of the same offices in New York, the certain charge would foot up to £1,170, "besides customs officers, a messenger for the council and other casualties."

Cornbury, nevertheless, did dutifully inform the third assembly that the queen would be satisfied with the amounts specified by the Lords, but expected it would be granted for twenty-one years.<sup>1</sup> But the assembly in its wisdom never granted him another penny during his administration. Thus his lordship's greed defeated itself. As a part of his total profit, however, we must remember that he had already received at least two large bribes, one at the beginning of his rule consisting of £200 in plate from certain of the proprietors represented by Dr. Johnstone;<sup>2</sup> and the second, the so-called "Blind Tax," raised by Capt. John Bowne and Richard Salter among the anti-quit-renters. This was said by Morris to amount to £1500.<sup>3</sup>

The general assembly proved entirely willing to make an appropriation upon the request of Lovelace, but, warned by past abuses, would make it for only one year. The amount given was £1600.<sup>4</sup> Of this, £800 was to be paid to Lovelace. But the untimely death of Lovelace opened the way for difficulties. Ingoldsby neglected to

<sup>1</sup> *Assembly Journal*, Apr. 7, 1707.



send the acts passed under Lovelace home for approval, thus rendering it easy to change them. The fifth assembly, which was not unfavorable to the Ingoldsby régime, in consequence actually passed "An Act for Explaining and Rendering more Effectual" the act of support. This gave to Ingoldsby £600 of the £800 appropriated for Lovelace.<sup>1</sup> As a consequence Lady Lovelace appealed to the Queen, and when Hunter arrived he bore a royal letter in favor of Lady Lovelace, stating that the Crown was not only satisfied that the £800 be paid to her but deemed it to be an act of the highest justice.<sup>2</sup> Hunter's assembly prepared a bill declaring the printed copy of all the acts passed in Lovelace's time valid as the originals. This measure would have given the Crown the opportunity of choosing between the original law and the act as altered under Ingoldsby. But the council, still under control of Cornbury's old clique, defeated it, with most of the other measures sent up by the assembly.<sup>3</sup> Hunter, however, ventured to send the printed copies of Lovelace's acts to the Lords. But it does not appear that any part of the money given Ingoldsby under the act 1709 was recovered.

The accession of Hunter marks the commencement of a new era in the financial history of the province, for from that time on "support" was granted regularly and without serious delay. At Hunter's first meeting with the assembly in the winter of 1710, "support" was voted for two years.<sup>4</sup> In preparing the act the assembly adopted the new plan of consulting the governor as to

<sup>1</sup> *New Jersey Archives*, vol. iv, pp. 57, 66. Hunter declared that Ingoldsby bribed the council.

<sup>2</sup> *Ibid.*, vol. xiii, p. 430; *Assembly Journal*, Jan. 11, 1710-11.

<sup>3</sup> *New Jersey Archives*, vol. iv, p. 58.

<sup>4</sup> *Assembly Journal*, Jan. 5, 1710-11.

his instructions on the subject,<sup>1</sup> and Hunter aided the representatives in their work by showing them an account of the expenses.\* The assembly now specified by resolution the amount of salary to be given each officer. Hunter received £500 a year "proclamation money," and £100 more for house rent, fire, candles, express, and other incidental expenses. The chief justice received £100, the treasurer £40, the clerk of the council £35, the clerk of the assembly £45, the door-keeper of the council £10, the door-keeper of the assembly £12, the sergeant-at-arms £12, the auditor-general £40, and the printer £30. The attorney-general was given £20, and each assemblyman was to have five shillings a day during sessions. For this purpose £300 per annum was to be raised and included in the act for support.<sup>3</sup> It can easily be seen that the small sums given to several of the lesser officers was due to dislike of the persons holding the positions, as Griffith and Basse.<sup>4</sup> The act, however, established a scale of salaries destined to be somewhat permanent. Hunter himself thought that the amount given was inconsiderable, but held the form of the act correct, and hoped that a larger sum might be given later.<sup>5</sup>

In 1713 the assembly again readily voted support for two years.<sup>6</sup> As before, the governor was given £500 for

<sup>1</sup> *Assembly Journal*, Dec. 21, 1710, Jan. 3, 1710-11.

<sup>2</sup> *Ibid.*, Dec. 23, 1710. Hunter stated to the house that he had no instructions fixing the amount of his salary.

<sup>3</sup> *Assembly Journal*, Jan. 5, 8, 1710-11; *New Jersey Archives*, vol. xiv, p. 121.

<sup>4</sup> No provision was made for the payment of the council.

salary, and £100 for expenses. In the salaries of the lower officers there were some small changes. The chief justice was given £100, the second judge £30, the clerk of the council £35, and the attorney-general £15. The treasurer was to have £50 for the first year and £40 for the second. The clerk of the assembly received eight shillings for each day during the sessions and an additional sum for "paper, parchment, minute books, etc." The door-keepers of the two houses had two shillings six pence per day for the session. Provision was made for the sergeant-at-arms, and the printer was reimbursed for printing sixty copies of the laws and votes passed during the session. Lastly, each member of the general assembly was to have five shillings for each day and for coming and going, but each councilor received six shillings per diem. This last item is not only interesting in itself as the first specified grant in payment for the council, but also shows the final reconciliation between the houses.

When the support was renewed in 1716, after the successful termination of the struggle with Coxe, Basse and Griffith, there were no important changes in the amounts appropriated. Hunter's salary was increased to £600, but this sum was to include his incidental charges. The door-keeper of the council now had £10 and the printer £25 per annum. The sergeant-at-arms received three shillings a day and councilors and representatives an equal amount of five shillings. The other salaries were substantially as before.<sup>1</sup> The last appropriation act of Hunter's time, passed in the session of 1718-19, was also hardly more than a continuation of the former act for

<sup>1</sup> *Assembly Journal*, Jan. 8, 1716-17; *New Jersey Archives*, vol. xiv, p. 79.

two years. It did, however, contain one interesting change in salary, as the pay of the chief justice was cut from £100 to £80.<sup>1</sup>

In Burnet's first meeting with the assembly, in February 1720-1, he made a strong plea for an increased revenue, declaring that, though the prosperity of New Jersey was increasing greatly, the salaries of her officers had actually been reduced.<sup>2</sup> The assembly promptly set about preparing a bill appropriating £1,020 for two years for the support of the government, and £700 for the purpose of paying the assembly and council at the rate of five shillings per diem for all sessions held during the two years. This was approximately the amount given under Hunter. But it was not satisfactory to the new executive. Under his influence the council amended the bill so as to make it run for the lifetime of King George and one year longer.<sup>3</sup> As the assembly would consider neither the power of the council to amend such a measure nor the extension of the grant, the bill was lost. Burnet declared that his instructions absolutely forbade him to accept a bill for so short a term.<sup>4</sup>

When Burnet met the assembly again, in March, 1721, under more favorable circumstances he again made a plea for an increased revenue. This time, however, he told the house not to think of him as much as of the inferior officers whose salaries had not covered their ex-

<sup>1</sup> *Assembly Journal*, Jan. 27, 1718-19. The reduction may be an indication of dissatisfaction with a chief justice resident in New York. See also *New Jersey Archives*, vol. xiv, p. 128.

<sup>2</sup> *Ibid.*, vol. xiv, pp. 147-8.

<sup>3</sup> The acts as prepared by the assembly and as amended by the council

penses.<sup>1</sup> The assembly now showed itself somewhat more willing to conform to the wishes of the governor and passed a bill supporting the government for five years.<sup>2</sup> The amount given, however, was approximately the same as under Hunter. Burnet received £500 with £100 for incidental charges, the chief justice £100, the treasurer of each division £20, the attorney-general £20, the clerk of the council £25, the doorkeeper of the council £10, the clerk of the assembly eight shillings per diem and a sum for express, paper, etc., the sergeant-at-arms three shillings per diem and three shillings more when traveling where he could not get fees, and the doorkeeper of the assembly two shillings six pence per diem. £60 was given to the council to be paid to its members in proportion to the time they attended while the assemblymen received the usual five shillings per diem. Afterward, however, the bill was amended so as to give the council five shillings per diem.<sup>3</sup>

The session of the fall of 1723 brought, however, a new complication. Heretofore all the sums appropriated for support had been raised by taxation.<sup>4</sup> But the position assumed by the home government that it would allow the issue of bills of credit only in acts for the support of the government now produced a result which might have been foreseen. An act was passed for the issue of £40,000 in bills of credit.<sup>5</sup> Of this sum £36,000

<sup>1</sup> *New Jersey Archives*, vol. xiv, p. 205.

<sup>2</sup> *Assembly Journal*, Apr. 4 and 5, 1722.

<sup>3</sup> *Ibid.*, Apr. 4, 1722.

<sup>4</sup> There had been one partial exception. In 1714 an act had been passed appropriating £999 13s. 6d. for the support of the government out of the moneys raised for the Canada expedition.

was to be loaned to the inhabitants of the province at five per cent. interest through the county loan offices. The £4000 remaining was to be paid to the treasurers of the two divisions of the province. Part was to be used to sink all old bills of credit still in circulation. But the rest was to go as emoluments to certain colonial officers. The members of the assembly and of the council were to have six shillings per diem for the present session.<sup>1</sup> The clerk, door-keeper and sergeant-at-arms of the assembly were to have their usual pay. Further, all councilors and assemblymen who had attended the session begun in February, 1721, were to have £10 each and all officers their full fees, deducting what they had already received. The treasurers were to have £10 a year additional for the next two years and the attorney-general £40 for services during the session. £1000 annually was to be raised by taxation for ten years in the same way as the money previously voted for support. The proceeds of this tax for the first four years were to go to sink the £4000 in bills of credit paid to the treasurers. The rest of the tax was to be used as an additional support for the government. This provision was no doubt the bait intended to induce Burnet, and perhaps even the home authorities, to approve the measure. For the student it is surely an act highly instructive as to colonial financiering.

Burnet himself seems to have been entirely convinced that the act was proper and indeed a great gain for the government. He wrote at length to his superiors in explanation and defense of it for it was well understood that the Lords of Trade viewed the issue of bills of credit with much suspicion.<sup>2</sup> In this case, however, they

<sup>1</sup> Assemblymen were to be paid on warrants from the speaker.

<sup>2</sup> *New Jersey Archives*, vol. v, pp. 75, 86 *et seq.*

agreed, though evidently rather unwillingly, to let the act stand for the present at least.<sup>1</sup>

During the same session the representatives succeeded in having Chief Justice Jamison replaced by William Trent, an inhabitant of the province who would ride the circuit. In connection with this matter they voted to pay £100 additional salary to a chief justice who would go on the circuit. They resolved also that the second judge should have £50 additional for the next two years, the attorney-general £40, and the clerk of the circuits £40.<sup>2</sup>

The session held in the spring of 1725 also brought certain interesting developments. The assembly proved very willing to continue the support for five years,<sup>3</sup> but in addition to voting the usual taxes they proceeded to appropriate the further sum of £1321 which had accrued as interest from the loaning of the bills of credit.<sup>4</sup> This welcome addition to the public funds of the province enabled the assembly to be much more liberal in its grants. Nearly all the salaries were increased.<sup>5</sup> Burnet received £500 a year and had £500 given for incidentals. The chief justice received £200 for salary and for riding the circuits. The second judge got £50, each treasurer £50, the attorney-general £50, the clerk of the council £30, the clerk of the circuits £30, the door-keeper of the council £10, the clerk of the assembly eight shillings per diem, and a fee of fifty shillings for every private bill passed, the sergeant-at-arms three shillings per diem, and four shillings extra when traveling if he could not collect fees. The door-keeper of the assembly received

<sup>1</sup> *New Jersey Archives*, vol. v, p. 121.

three shillings per diem; councilors and assemblymen were raised to six shillings per diem. Bradford, the printer, received £25 for printing the acts in 1722, and other past services were suitably rewarded.

Burnet again did his best to persuade the Lords of Trade that the act marked a triumph for the government, and that no harm could possibly come to the currency of the province through the appropriation of the interest money.<sup>1</sup> But the Lords were not enthusiastic. They solemnly warned him that such proceedings had caused great harm in other colonies, and strongly desired that no further alterations in the disposal of the bills of credit be made.<sup>2</sup> However, they were willing to let the new act stand without formal approval. According to Burnet this concession was obtained only through the representations of the agent La Heupe.<sup>3</sup> After the receipt of the answer of the Lords, Burnet, who had every opportunity of knowing colonial feeling on the subject, wrote several times, urging that the appropriation of the interest be allowed.<sup>4</sup> He even offered to assume all responsibility personally.<sup>5</sup> But as usual the Lords gave no indication of any change of opinion.

But in spite of the attitude taken by the Lords the assembly in its session of 1727 proceeded among other financial measures to pass a bill for appropriating £1725 of the interest money on the bills of credit for the support of the government and other purposes.<sup>6</sup> This ninth assembly, it will be remembered, was dominated by John Kinsey, Jr., a politician only too ready to op-



pose the government in the interest of a popular cause. Burnet was given £600 for incidentals out of the interest; the councillors and representatives were to receive six shillings per diem for the session, and the other officers of the house received their usual fees. Kinsey himself was to have £20 for drawing up bills and other services. Richard Partridge, the new agent from whom much was expected, received £100 directly, and £270 in addition was given to the committee which had charge of the agency to be transmitted to Partridge at such times as should be deemed best.<sup>1</sup>

In spite of what he had been told, Burnet accepted this act, and in informing the lords of its passage stated that, though he was disappointed that they had not been convinced by his former arguments, he again enclosed certificates to show that the bills of credit had risen in value, and trusted that they would excuse his giving way to a measure he could not avoid.<sup>2</sup> Meanwhile Montgomerie had succeeded Burnet, and also wrote to the lords in favor of the act.<sup>3</sup> In reply the lords wrote to Montgomerie expressing their strong disapproval of Burnet's action in passing the bill.<sup>4</sup> They stated that, if the last clause which allowed the general assembly to appropriate all interest money on bills of credit, when it accrued, to the charges of the government, were not repealed, they would have the act disallowed, and they ordered Montgomerie to move the assembly to its repeal. Against this order Montgomerie protested at length.<sup>5</sup> Meanwhile, however, misunderstanding between Montgomerie

<sup>1</sup> *Assembly Journal*, Feb. 9, 1727-8.

<sup>2</sup> *New Jersey Archives*, vol. v, pp. 192-4.

<sup>3</sup> *Ibid.*, vol. v, pp. 190, 249.

<sup>4</sup> *Ibid.*, vol. v, p. 200.

<sup>5</sup> *Ibid.*, vol. v, p. 249.

and the ninth assembly had prevented any appropriations during its second session.

The tenth assembly began work upon an act for the support of the government for five years,<sup>1</sup> but soon withdrew it and substituted a bill appropriating the money to be raised by the unexpired act of 1723 for additional support and for raising a further support for one year.\* At the same time work was begun on a bill to enforce the payment of the incidental charges of the government out of the interest money made subject to appropriation by the act of 1727.<sup>3</sup> Both of these measures were eventually passed, Montgomerie offering no real opposition. The expenditure was smaller than under Burnet, in spite of the fact that lighter taxation was secured through the use of the interest. The measures provided for the appropriation of £1,000 for the five ensuing years. The governor was given £500 per annum, the chief justice was cut to £150 (which must include his expenses on circuit), and the second judge, treasurers and attorney-general to £40 per annum apiece. The secretary was to have £25 per annum during the continuance of the acts reducing his fees, and £80 a year was appropriated for the agent. The other officers received about as before.<sup>4</sup>

In transmitting these acts to the lords, Montgomerie admitted that he had been overridden, and justified himself for assenting to them by saying that the province was determined upon them, and that if he had not yielded the government must have gone without support.<sup>5</sup> The lords in reply said rather sternly that they

<sup>1</sup> *Assembly Journal*, May 27, 1730.

<sup>2</sup> *Ibid.*, June 3, 1730; Bradford, *Statutes of New Jersey*.

must adhere to what they had formerly said, and that as the assembly had not repealed the clause of the act of 1727 making the interest money subject to appropriation they had laid the said law before the king for disallowance.<sup>1</sup> In spite of this threat, however, it does not appear that the act was disallowed.

With such precedents it was but natural that the assembly should continue to follow its own desires in the matter of appropriations, especially as the substitution of Cosby for Montgomerie added little real strength to the provincial executive. In the only session of the assembly held under Cosby, that of 1733, the legislature again made use of the interest money of its bills of credit for meeting the charges of the government, though they added a clause to the act suspending its operation until it had been confirmed by the crown.<sup>2</sup> The same policy of retrenchment which was adopted under Montgomerie was followed. The acts passed gave only £100 per annum for the support of the government for the years 1736-8, and the salaries of the officers remained practically as under the law of 1730. It is important to note that the appropriation of £80 for the agent was continued, and his place as a regular officer of the colony was thus better established.<sup>3</sup>

Considering the grants for support of the union period

that he had conferred with every one of the members of the assembly and had told them that he was ordered to move the repeal of the clause of the late act subjecting the interest money to appropriation is an almost pitiful confession of helplessness in light of the result. He had not, however, received the reply of the Lords to his recent representations.

<sup>1</sup> *New Jersey Archives*, vol. v, p. 302.

as a whole, the student cannot avoid being impressed with the great economy shown by the general assembly in making such appropriations, and by the fact that this economy tended rather to increase than diminish as the colony grew in population and prosperity. Beginning with the grant of £2000 a year, made to Cornbury, we find the amount cut to £1300 under Lovelace, Hunter and Burnet, and finally reduced to £1000 under Montgomerie and Cosby, and this in spite of the inclusion of the income gained from the bills of credit. We must, however, avoid drawing inferences too hastily. The reason for the later reduction was not so much unwillingness to maintain an efficient government as lack of confidence in new and untried governors. Moreover, it was highly proper that the assembly should not yield to the demands of royal officers, whose views on the subject of the dignity of the government had been formed amid other conditions. We should also remember that the ability of the colony to pay depended not so much upon the value of its resources as upon the amount of actual currency, always insufficient, which it had at its command.<sup>1</sup>

In judging the amount of the salaries given the provincial officers we should also be on our guard. The exceedingly small sums given to the subordinate officers by no means represented their total emolument, which consisted chiefly of fees for the performance of the various acts pertaining to their offices. This fact is well illustrated by the case of James Smith, the secretary of

£25.<sup>1</sup> These fees were of course not taxes upon the entire province.

Aside from the salaries, there were certain other expenditures which seem to have been taken somewhat regularly out of the appropriations for support. These were chiefly sums voted to persons for performing some necessary service for the province or the assembly. Numerous sums, varying according to the service, were paid to the printer, William Bradford, for printing the laws of the colony.<sup>2</sup> The clerk of the house, and sometimes other officers, were reimbursed for special service.<sup>3</sup> The sergeant-at-arms received amounts to cover his traveling expenses.<sup>4</sup> Special rewards were on several occasions sent to the agent.<sup>5</sup> Individual members, like Kinsey, were even paid for drawing bills and similar services. But though such payments as these were authorized at nearly every session of the legislature, the total sum thus expended was never large.

Aside from the payment of salaries and the incidental charges connected with the holding of assemblies, the regular expenditures of the provincial government were indeed inconsiderable. About the only other regular charges authorized by colonial laws were for the building and repair of court houses and jails,<sup>6</sup> for the laying out and repair of roads,<sup>7</sup> and for the payment of premiums for

<sup>1</sup> *New Jersey Archives*, vol. v, p. 199.

<sup>2</sup> *Assembly Journal*, Jan. 5, 1710-11; Feb. 17, 1713-14; Jan. 8, 1716-17; Jan. 29, 1718-19; June 18, 1725, etc.

<sup>3</sup> *Ibid.*, e. g., Aug. 7, 1725.

<sup>4</sup> *Ibid.*, e. g., Apr. 4, 21, 28, 1722.

<sup>5</sup> *Ibid.*, Nov. 26, 1723; Feb. 10, 1727-28.

<sup>6</sup> Allinson, *Statutes of New Jersey*; *New Jersey Archives*, vol. xiii,

the killing of wolves, panthers, red foxes and other dangerous animals.<sup>1</sup> Though these expenditures were authorized by provincial acts, yet in their nature they were really county expenditures. The amounts required were to be determined by county officers and assessed in the counties by their direction. In a similar way the overseers of the poor were authorized to expend such sums as were needed and to assess the same upon their townships or precincts.<sup>2</sup>

The province did, however, employ, aside from its regular officials, such officers as tax assessors and collectors in the various counties, commissioners for the management of the loan offices established under Burnet, and commissioners for the signing of bills of credit. Tax collectors were remunerated by being allowed to keep small percentages of what they collected.<sup>3</sup> The commissioners of the loan offices received sums, specified in the loan-office acts, out of the interest on the amounts loaned.<sup>4</sup> The commissioners for signing bills of credit, who were usually prominent members of the assembly, also received their pay out of the bills signed.<sup>4</sup> The expenditures for all the above purposes came only indirectly out of the pockets of the people.

But there were certain extraordinary expenditures during the union period which the province was called upon to meet and which entailed most important results both of a financial and a political nature. These were in connection with the two futile expeditions against Canada, to which New Jersey was obliged to contribute.

For the Nicholson-Vetch expedition of Ingoldsby's time New Jersey raised £3000 to maintain her quota,<sup>1</sup> and for the Walker expedition two years later she gave £5000.<sup>2</sup> These heavy immediate expenses were met by the issue of bills of credit, and indeed caused the beginning of the issue of this form of currency in New Jersey. The expense of sinking the bills was to be met by moneys raised from taxation, but, as there was no direct return from the expeditions, the province was thus left for several years with a troublesome debt in the form of outstanding bills. As we shall see later, the handling of this debt was for a time the leading factor in the financial history of the province.

The methods of raising money followed in the province of New Jersey were from the modern standpoint primitive in the extreme. The acts for support regularly provided for the levying of a land tax and a general property tax. The acts themselves were very similar in their general character, and most of the perplexities connected with modern taxation were of course unknown.

The system of taxation in the royal province was begun by the act of support of 1704.<sup>3</sup> This contained an interesting preamble setting forth that "Her majesty's dutiful subjects, the representatives," being deeply sensible of her majesty's "tender care" in appointing Cornbury as governor, were heartily willing to support the government "to the utmost of their poor ability." The law then enacted that every freeman, married or unmarried, the tax on whose real or personal estate did not amount to six shillings, should notwithstanding pay six

<sup>1</sup> *New Jersey Archives*, vol. iii, p. 468.

<sup>2</sup> *Ibid.*, vol. xiii, p. 481; *Assembly Journal*, July 10, 1711.

<sup>3</sup> *Laws Enacted in 1704* (Bradford print).

shillings. All persons keeping ferries must pay twenty shillings for each ferry; but a certain widow Jones, who kept a ferry at Piscataway, was exempted. All wherries that carried passengers and all boats or sloops exporting wood or other commodities, paid fifteen shillings. All persons selling beer, ale or cider under ten gallons, or stronger drink under a quart, after the publication of the act, were to be taxed at the discretion of the assessors not under twenty shillings nor over three pounds. The assessors were also to tax at discretion all owners of grist mills and saw mills, all Indian traders, shop-keepers, and merchants trading in the province. Mill owners were to pay not under twenty shillings nor above three pounds, and all traders not under twenty shillings nor over four pounds.

The rest of the £2,000 appropriated was to be raised by a tax "upon goods and chattels." All lands held by surveys, deeds or patents belonging to inhabitants or to persons not in the province, who had settled the same by tenants, servants or slaves, were valued at £10 per one hundred acres. All cattle and horses over one year old were valued at forty shillings each. All slaves, excepting those disabled, were rated at £20. Sheep were to be held worth four shillings per head.

For raising the tax two assessors and a collector for each county were named in the act itself. These persons were to take an oath for the faithful performance of their duties before two justices of the peace, and if they failed to carry them out, were to be fined £5, and taxed at the discretion of the assessors. If anyone gave an untrue list, he was to pay ten times the value of the object concealed. The assessors were to meet at Amboy on April first next and the following year at Burlington in order to apportion the tax. They were to sum up the



amount to be obtained by the taxation of heads and other objects of assessment and subtract it from the £2,000. Then they were to account the goods and chattels reported and assess the tax equally. The assessors of each county were to make perfect lists of the assessment of each person, and these were to be given to the constables, who were to notify the persons taxed on or before May first. All taxes were to be paid in current silver of the eastern division on or before May 15th, and the collectors were to give receipts.

Lists were to be drawn immediately of all who had neglected to pay. These were to be given by the collectors to any justices, and the latter were at once to issue warrants to the constables to make distress upon the goods of offenders. If these distresses were not redeemed within five days, they were to be put up for sale, but the overplus was to be returned to the owner. All taxes were to be paid by the collectors to the receiver-general on or before June 15th. Each collector and assessor was allowed twenty shillings per annum and every constable twelve shillings, besides such fees as arose from distress.

It seems probable that beneath some of the provisions of the act of 1704 lay the desire of the majority of the assembly to injure their opponents, the proprietors. Many of the proprietors in England held patents for large tracts, which they had settled only in small part by sending over servants or tenants. Such persons could be subjected to heavy taxation. The act, moreover, had given its own execution into the hands of men the opposition of most of whom to the proprietors was well known. Nevertheless the act marked out the lines which all subsequent acts followed in a general way, though of course many details were altered or added.

The act of 1711, the first act of support under Hunter, provided for a tax closely resembling that of 1704-5.<sup>1</sup> All freemen whose salable estate was not assessed at six shillings were nevertheless to pay six shillings, but all tradesmen who followed their trades were to pay from four to sixteen shillings, at the discretion of the assessors. The ferries of the province were now to contribute different sums, which were fixed by the assembly. These ranged from six shillings, to be given by the ferry at "Weighhawk," to thirty shillings, from the ferry at Amboy. Every wherry carrying passengers and goods for hire was taxed twenty shillings, and every flat-boat ten shillings. Wood-boats carrying six cords of wood paid twenty shillings, and if under six cords ten shillings; if under four cords six shillings. Grist and saw-mills were taxed from fifteen shillings to three pounds, at discretion; fulling-mills from ten shillings to twenty shillings. Merchants and traders were to give from twenty shillings to ten shillings, at discretion, and inn-keepers from twenty shillings to ten pounds.

Some changes were also made in the general property tax. All unimproved land<sup>2</sup> was to be valued at £7 per one hundred acres. All laboring slaves over fourteen and under fifty were valued at £15 per head; all cattle and horses over three years at forty shillings. Hogs and sheep, if one year old, were to be held worth four shillings, but swine over one year old were valued at six shillings. All sums were of course in proclamation money.

From the accession of Hunter to the end of the union

same way. The amounts of the various assessments of course varied a little according to the total sums to be raised, yet the changes were not great.

In the act of 1713 it was first specifically stated that persons not residing in the province, bringing in goods for sale except at public fairs, should be taxed on the same scale as resident traders.<sup>1</sup> In 1716 it was enacted that such persons, if they sold at retail, should be taxed not under four pounds. This clause introduced the principle of discrimination in favor of home traders, who were to be taxed from thirty shillings to five pounds at discretion. The act of 1716 also stated that all vessels or boats coming into the Jerseys from other provinces should pay the same taxes as the boats of the province.<sup>2</sup>

In 1713 it was ordered that, in making up the general property tax, all owners of houses and lots in towns the tax of whose salable estate did not amount to eight shillings should pay at the discretion of the assessors not over ten shillings nor under five shillings per annum. The following act declared that they should pay not over twenty shillings nor less than three shillings. In the law of 1716 an important feature was added by the order that, in valuing land, all unimproved land held by surveys or patents whereon could be found any goods of any one inhabiting was to be valued at £7 per one hundred acres as formerly, but if absolutely no settlement had been made it was to be valued at £4 per hundred. This change was no doubt in the interest of the proprietors.

The act of 1716 enumerated all the mills in the province and fixed the tax to be paid by each just as in the

case of the ferries. The amounts ranged all the way from forty shillings to five shillings. But this precedent was not afterward followed, or at least the amounts were not entered on the assembly journal or in the act itself.

The last appropriation act of Hunter's time, that of 1718, made no important changes except that it did not keep the discrimination against outside traders established in 1716.<sup>1</sup>

Burnet's first act of 1722 reduced the per capita tax from six shillings to four shillings.<sup>2</sup> It laid, however, a "certainty" upon all public-house keepers who were to pay at least £5, though not more than £15. This provision was an important addition. Merchants and shop keepers were also assessed from £5 to £15, though Indian traders escaped more easily. All lands regularly held, whereon any improvement had been made, were to be valued at only £5 per one hundred acres. Unimproved lands were not mentioned. It was now specified that all taxes for support of the government must be paid in gold, silver, or wheat. Wheat was to be taken at five pence less per bushel than its market value at New York or Philadelphia. Bills of credit were of course not to be taken.

The act of 1725 required all those who brought goods to sell from neighboring colonies to pay £3 to the treasurers or county collectors.<sup>3</sup> Otherwise they forfeited £6 for each offense. Merchants of the Jerseys paid from twenty shillings to five pounds. Otherwise

<sup>1</sup> *Assembly Journal*, Jan. 31, 1718-19; *Laws Enacted in 1718-19*

no important change was made from the previous arrangements.

The later acts of Burnet, Montgomerie and Cosby, follow in principle the earlier legislation. The amounts levied by them were, however, for reasons already stated, somewhat less than those called for by the earlier acts.

The method of collecting and apportioning the taxes also remained very much the same throughout the period we are treating. The method employed in 1704 appears to have been followed until 1716, when an act for the more regular choosing and electing of assessors and collectors in the respective towns and counties was passed.<sup>1</sup> By this it was enacted that the freeholders of each town or precinct should meet and elect annually one assessor and one collector. If the freeholders neglected to do this, any three justices might meet and appoint a collector and an assessor. Within ten days these officers were to qualify themselves by oath or affirmation before a justice. On a provincial tax the assessors were to go to all the inhabitants and take an exact account of all their ratable goods. Then they were to meet at the most convenient place of their counties and assess the inhabitants equally to make up the county's quota. The assessor was then to make out a list of every person's tax and deliver one copy to the collector of each town and one to the collector of each county, who was still, as under the old arrangement, to be named in the act of the assembly. The local collector was forthwith to gather the tax and pay it to the county collector, who was to pay the same over to the treasurer or such person as the act directed. The fees of the assessor were nine pence per pound, and of the collector six pence per pound.

<sup>1</sup> Allinson, *Statutes of New Jersey*.

If any person concealed any of his estate from the assessor, he was to forfeit two shillings per pound for such neglect, to be recovered by any one by an action for debt before any justice, one-half to go to his own use and one-half for the Crown. If any refused to pay, the collector was to return his name to a justice, who was to issue a warrant to the constable for distress. If there were no goods, the person was to be taken and turned over to the sheriff, who was to keep him in custody until the tax and costs were paid. If any collector, assessor, or justice refused to perform the distress, he was to forfeit forty shillings, and in the case of the death or removal of any collector or assessor any two justices of the peace might appoint others.

If any person thought he was wronged by the assessment he might appeal to the next court of quarter sessions or, in case the tax was to be paid before such court, to three justices of the peace. These bodies might make abatement, or if it appeared that any were not assessed high enough they might levy the extra sum.

When it was necessary to levy a county tax, it was to be assessed and raised in the same manner and was to be paid to the county collector, to be used as determined by the justices of the county with the freeholders chosen according to the act for building and repairing jails, etc.

The county collectors were to keep "fair accounts" of all sums received from the several local collectors, and of the deficiencies due from each, and for all moneys raised for support of the government were to deliver the same

This act remained in force during the union period. The system of local election of assessors and collectors established by it was certainly far more in keeping with the spirit of the colony than the old arrangement by which those officers were named directly by the assembly.

The apportionment of the taxes among the counties was now regularly made by the assembly. The act of support of 1718 apportioned the sum of £1350 appointed to be raised for the first year as follows: Bergen, £111 12s.; Essex, £180 5s.; Middlesex, £157 16s.; Somerset, £52 6s.; Monmouth, £230 2s.; Burlington and Hunterdon, £270 18s.; Gloucester, £116 19s.; Salem, £194 14s.; Cape May, £42 8s. This apportionment should give a fairly correct estimate of the relative wealth of the counties.<sup>1</sup> The act of 1720 apportioned the sum of £1111 to be raised for the first eighteen months on a scale practically similar: Bergen, £90; Essex, £151; Middlesex, £129 3s.; Somerset, £43; Monmouth, £188; Hunterdon, £80; Burlington, £140; Gloucester, £95; Salem, £158; Cape May, £36 17s.<sup>2</sup>

The tax for the support of the government was the only regular provincial tax levied for the sake of the proceeds. But it was by no means the only tax levied by provincial laws. The other taxes may be divided into two classes: first, those to meet county and local expenditures; and second, those intended to regulate the trade of the colony or to produce certain social results.

Among the taxes of the former class are to be placed

the laying-out of highways, for the relief of the poor, and for providing premiums for the slaying of wolves and other dangerous animals. In 1714 was passed the first act "for raising money for the building and repair of gaols and court houses within each county."<sup>1</sup> This enacted that once each year the inhabitants of each town or precinct should choose two freeholders for the ensuing year. These "chosen freeholders,"<sup>2</sup> together with the justices of the peace, were to meet and agree upon such sums as should be needed for jails and court houses. The county board thus created was to name assessors and collectors for gathering such tax, and was given full power to enforce its payment. The justices and freeholders were also to name managers to carry out work agreed upon, and these were authorized to draw warrants upon the collectors for payment for the work and materials. But all such officers were accountable to the county board. The act provided also that, if the people neglected to elect "freeholders," the justices of the peace in their quarter sessions might appoint them.

The provisions of this act were, however, modified in some respects by the act of 1716, for the more regular choosing and electing assessors and collectors for the raising of provincial taxes. The new law, as previously stated, laid it down that county taxes should be raised in the same manner and by the same assessors and collectors as the provincial tax. For the employment of all county moneys, however, the county collector was to be responsible to the justices and "chosen freeholders," as before. As the former law was not formally repealed,



1719, when a new act was passed "to Prevent Mistakes and Irregularities by Assessors and Collectors."<sup>1</sup> This ordered that in future all county taxes be raised in accordance with the act of 1716. Such sums were to be paid by local collectors to the county collector, to be disposed of as appointed by the justices and the chosen freeholders. The part of the law of 1714 relating to assessors and collectors was thereby repealed. The arrangements thus made remained in force during the rest of the union period.

In 1719 there was also an act for the building, rebuilding, repairing or amending of bridges in the respective towns or precincts.<sup>2</sup> It enacted that in the case of large bridges lying wholly within a town or precinct, which could be repaired only by the assistance of special handicraftsmen, the overseers of the highroads of the town were to apply to its two chosen freeholders and two justices. These, with the surveyor of the highroads of the town, were to contract for the necessary repairs. The sums required were to be collected and assessed under the act for the more regular choosing of assessors and collectors. Any surplus was to be used on the highroads.

Beginning with the passage of the act of 1704 "for laying out, regulating, clearing, and preserving public common highways throughout this province," there was always a system of contributions for the maintenance of roads.<sup>3</sup> Such contribution, however, was paid in labor rather than in money. The act of 1704 ordered the construction of certain provincial highroads and named commissioners of highways in each county who were to

lay out such roads, if they did not already exist, and also such lesser roads as the counties required. For maintaining the highways the justices of the peace in their quarter sessions were to name two overseers of the highways for each town or precinct in each county. These overseers were to summon such and so many of the inhabitants as they should think fit to meet at such times and places, and to labor upon the roads for so long a time as the commissioners should appoint. Each team, with cart or wagon, was to be "esteemed" at three days' labor for one man. There was a six-shillings fine for absence, but the overseers were to employ inhabitants justly and equally.

This act, with the others passed by the second assembly, was disallowed by the Crown,<sup>1</sup> but not before it had been executed. The commissioners named were all men who could be depended upon to work in the interest of Cornbury's faction, and it is asserted that their chief object in constructing roads was to injure their enemies by compelling them to pull down their enclosures and to allow roads to be run through their orchards.<sup>2</sup>

In 1716, under Hunter, the system was put on a better basis by the passage of an "Act for the Better Laying out, Regulating, and Preserving Public Roads and Highways thro' this Province."<sup>3</sup> This confirmed most of the roads laid out under the previous act, but ordered that henceforth the freeholders and inhabitants of each town should choose four persons for surveyors of the highways, of whom the justices in quarter session should select two who should act for the ensuing year. The quarter sessions of each county was also to appoint two persons of each town or

<sup>1</sup> Allinson, *Statutes*.

<sup>2</sup> *New Jersey Archives*, vol. iii, p. 280.

<sup>3</sup> Nevill, *Statutes*.

precinct to act as overseers, to keep all roads in repair. The overseers, as before were to call the inhabitants to mend the highways, and the fine for default was four shillings six pence. Overseers were to account to their successors for all sums received, and if the labor of all the persons of a town was not needed every year the overseers were to give to their successors an account of those who had not worked. New roads were to be laid out by the surveyors with the assistance of those of the adjoining townships, but this was to be done only upon application made to them by the inhabitants of the town, and care was to be taken not to injure the lands of any. Provision was made for altering the course of roads laid out under the former act where it had proved inconvenient. The law also contained special provisions covering certain cases, like the repair of the bridge of Gloucester River on the Salem road and that over South River on "the great highroad" between Amboy and Burlington, where the expense was too great to be borne by the adjoining towns. County taxes were here provided for.

In 1709, under Lovelace, a system of poor relief was established by an "Act for Relief of the Poor."<sup>1</sup> This enacted that each township or precinct by warrant from one justice should meet and choose overseers and assessors. The assessors were to assess the inhabitants such sum and in such manner as the township in its meeting agreed upon, and the overseers were to collect the same. The overseers with the aid of one or more justices were to "put forth" such children as had no parents able to care for them, and to see that all poor were supplied with necessary maintenance. Pounds

<sup>1</sup> Allinson, *op. cit.*

were also to be built for stray cattle and horses, and placed under the direction of persons selected by the towns.

In the same session of the legislature an act for destroying of wolves, panthers, crows, and blackbirds was passed, offering small premiums to all who should slay such animals. Such sums were to be paid by the justices in their sessions with the concurrence of the grand jury, and were to be raised by assessors and collectors nominated by the said authorities.<sup>1</sup> In 1730 this law was superseded by another.\* The justices and the chosen freeholders of each county were now to raise the required sums in the same manner as other county taxes. The premiums were limited to wolves and panthers: twenty shillings for a wolf, (five shillings if it were a whelp unable to prey), and fifteen shillings for a panther.

Such, with the exception of certain acts of special and limited application, were the chief local taxes levied under provincial law during the union period. While it is impossible now to estimate accurately their amount, they must certainly have been very light when the conditions of the country are considered.

Of a different nature were the import and export duties, levied for various reasons upon articles of commerce. In 1714, under Hunter, such enactments were begun by the levying of an export duty of thirty shillings per thousand on pipe staves, and of twenty shillings per thousand on hogshhead staves exported out of the eastern division to neighboring colonies.<sup>2</sup> The proceeds were

<sup>1</sup>Bradford, *Laws of the Province of New Jersey* (1717).

to go for the support of the government. The reason assigned was that the exportation of staves would cause a waste of timber, and was at present a great discouragement to the trade of the colony. In the same session a duty of £10 per head was laid upon all negro, Indian, and mulatto slaves imported.<sup>1</sup> Hunter stated to the Lords of Trade that the object was to encourage the bringing of white servants "to better people the colony."<sup>2</sup> The act, however, permitted a person intending to settle permanently in the province to bring free of duty as many slaves as he chose. At the same time a duty was laid upon all wheat exported out of the eastern division to any other American colony. Hunter declared that this was to encourage their manufacture of bolting that they might have the benefits of their own produce.<sup>3</sup>

In 1716 the duties on staves and wheat were repealed.<sup>4</sup> But in 1725, under Burnet, a new law was passed imposing duties on wheat, wheat meal, staves, and headings of all sorts, and bolts whereof staves or headings might or could be made.<sup>5</sup> This law ordered that all persons exporting from the eastern division into the western or any other English colony on the continent, any wheat or wheat meal, before it had been bolted or packed, or any staves or headings made of oak, or any bolts whereof staves or headings might be made, should first enter the same with the collector of customs of the eastern division, and pay one shilling for every bushel of wheat or wheat meal unbolted and fifteen shillings for

<sup>1</sup> Allinson, *op. cit.*; "An Act for Laying a Duty on Negro, Indian and Mulatto Slaves," etc.

<sup>2</sup> *New Jersey Archives*, vol. iv, p. 196.

<sup>3</sup> *Ibid.*, vol. iv, p. 203.

<sup>4</sup> Bradford, *Statutes*.

every thousand staves of thirty-five inches and under, and higher rates according to an established scale if they were longer. Also such persons must pay thirty shillings for every thousand of heading of any sort and nine pence for bolts whereof staves or headings could be made. Payment was to be made to the collector or his deputy, and the penalty was forfeiture of the goods. Masters of vessels were required to enter into bond yearly with the collector to the sum of £1,000 that they would not ship any articles contrary to the act, and any master or other person violating the act was to forfeit £20. The law was to be enforced for ten years and no longer.

The purpose of the act was to bring about the grinding and bolting of the wheat before it was exported.<sup>1</sup> It was also thought that it would encourage the making of casks within the province. As the representatives and people of West Jersey were not in favor of the measure, it was not applied to them. The motive was of course to benefit East Jersey, even at the expense of the neighboring provinces of New York and Pennsylvania. The law was not re-enacted during the union period and therefore expired in 1735.

Of different nature was an act passed in 1730 under Montgomerie imposing upon masters of vessels bringing into the province persons previously convicted of heinous crimes a duty of £5 per head.<sup>2</sup> They were also to be bound in £50 for the good behavior of such convict for one year. The act also provided at length against efforts to avoid its conditions and fixed heavy

Though the laws summarized above have much interest and importance as revealing the economic and social policy of the colony, they were doubtless of little account as direct sources of income to the government. Of more value in this direction was the excise upon all strong liquors retailed, established in 1716.<sup>1</sup> The charges made upon keepers of public houses in the acts for support had, of course, been really a tax upon the retailing of liquor, but previously there had been no separate excise. The excise of 1716 laid a duty of twelve pence per gallon on all rum, brandy, wine and other spirits retailed under the quantity of two gallons, and of four shillings six pence upon every barrel of cider retailed under the quantity of five gallons; and for every barrel of beer retailed, two shillings, and for every gallon of "cider royal" and metheglin, six shillings per gallon. The proceeds were for the support of the government. The act was, however, limited to five years, and it was not renewed. The same object was, however, secured by laying a heavier charge upon inn-keepers in the regular acts of support under Burnet.<sup>2</sup>

The excise was by a clause in the act of 1716 farmed out to David Lyell and William Bradford for the full five years. In return they were to pay the crown £300 yearly. They and their deputies were given the right to enter into all houses and cellars belonging to retailers of strong-drink, to gauge and take account of all such liquors, and in case the retailers refused to enter into bond to pay the duties the farmers might seize all the liquors. Further, all retailers were to declare to the farmers or to such deputies as they should appoint in each county the quan-

<sup>1</sup> *Laws Enacted in 1716* (Bradford print).

<sup>2</sup> *Laws Enacted in 1722-3* (Bradford print).

tity and quality of such liquors as they received. All liquors not reported were to be seized and three times the value thereof forfeited. There were the usual provisions inflicting penalties against those who tried to avoid the act on various pretexts, but the farmers were on their part held strictly accountable to the governor, council, and general assembly at the end of the five years. The act concluded with the characteristic provision that, to prevent the charging of unreasonable prices for liquor or provisions by public-house keepers, the justices of the peace in their sessions should fix the prices of all such articles.

Such was the system of taxation existing in the province down to 1738. Doubtless it was crude and unscientific, yet it seems to have been in general fairly just in its distribution of the burdens. As in all the colonies, there was grumbling enough over the payment of taxes, though there was no effort to establish any other system.<sup>1</sup> In a society where wealth consisted chiefly of land and tangible objects, the problem of taxation was of course far simpler than under present conditions.

It cannot, however, be maintained that the arrangements for tax collecting worked smoothly, for the province was in continual difficulty because the taxes were nearly always in arrears. This was especially the case under Hunter. The difficulties experienced in collecting the taxes under that able governor were, however, undoubtedly due to a systematic effort made by the faction of Coxe and Basse to embarrass and, if possible, overthrow the chief executive.<sup>2</sup>

<sup>1</sup> Unless we consider as such the efforts to lighten taxation through the issue of bills of credit.

<sup>2</sup> *New Jersey Archives*, vol. iv, p. 232.



There is little evidence regarding the raising of the revenues under Cornbury and Lovelace. In 1713, however, the sixth assembly, after investigating through committees the accounts of the taxes since 1708, felt it necessary to pass a special act for collecting the arrearages.<sup>1</sup> But the great conflict between the governor and Daniel Coxe and his supporters in the seventh assembly increased the disorder. During the second session of the seventh assembly another law was enacted "to Enforce the Payment of all Public Taxes."<sup>2</sup> But this certainly did not remedy the evil. In the third, or Chesterfield session of the same body, a full investigation of the accounts was made by the house in committee of the whole, and a startling condition revealed.<sup>3</sup> It appeared that the province was in arrears £380 on the taxes for support voted since Hunter took office, besides £327 on the taxes for the first Canada expedition, and a further sum which could not be exactly estimated upon the £5,000 tax for the second expedition. The worst condition existed in Burlington County, where the influence of Coxe was strong, and where Hewlings, a supporter of Coxe, was assessor. So bitter was his partisanship, that he preferred to incur the penalties for failure in his duties rather than assess.<sup>4</sup> On the taxes for support for the years 1711, 1712, 1714 and 1715 Burlington was in arrears no less than £246 8s 10d.<sup>5</sup> The assembly, in consequence, passed a bill to enforce the payment of 340 ounces of plate in the county of Burlington, that sum being its share of the £5,000 tax for the year 1714.

<sup>1</sup> *Assembly Journal*, Feb. 9, 1713-4.

<sup>2</sup> *New Jersey Archives*, vol. iv, p. 261.

<sup>3</sup> *Ibid.*, vol. xiv, p. 51; *Assembly Journal*, Jan. 14, 1716-17.

<sup>4</sup> *New Jersey Archives*, vol. iv, p. 292.      <sup>5</sup> *Ibid.*, vol. xiv, p. 52.

and voted to address Hunter to order the prosecution of all concerned in the mismanagement of the taxes.<sup>1</sup> The act for the more regular choosing and electing assessors and collectors, previously described, was also a result of this session.

But in spite of the efforts of the assembly, the auditing of the accounts in the spring session of 1718-19 showed that there was still due as arrears of taxes a sum which, with interest, amounted to £891 9s 5d. Accordingly, in the act of support prepared during the meeting, provision was made for assessing and raising from the various counties in addition to the new tax their share of the arrears. Burlington was to pay £295 and Hunterdon £198.<sup>2</sup>

These means seem to have been fairly effective, as the examination of accounts by Burnet's eighth assembly in 1722 revealed only comparatively small arrears. Thus there was due from Burlington, though this did not include the support voted in 1718, only £15 12s. Several counties were completely paid up. The total due was £207 15s.<sup>3</sup>

From this point on the collection of the taxes evidently became a matter of less difficulty. We find that the arrears due in West Jersey for 1722, 1723, and 1724 were only £2 19s,<sup>4</sup> while, during the service of Michael Kearny as treasurer of East Jersey, in 1723 and 1724 that division actually overpaid £1 17s.<sup>5</sup> There was, however,

<sup>1</sup> *Assembly Journal*, Jan. 15, 1716-17. Basse's speech, the only speech recorded in the assembly journal, was made upon the financial situation.

<sup>2</sup> *Laws Enacted in 1718-19* (Bradford print); *Assembly Journal*, March 17, 1716-19.

<sup>3</sup> *Assembly Journal*, Aug. 27, 1722.

<sup>4</sup> *Ibid.* Aug. 20, 1725.

a deficiency in the revenue for 1726. The taxes were again short £28, due from Burlington, Cape May and Middlesex. Moreover the collector of Piscataway "eloped" with the greater part of the taxes raised there in 1722.<sup>1</sup> The deficiency was nevertheless not regarded as very serious. Later auditings by the legislative committees, as those of 1730<sup>2</sup> and 1733,<sup>3</sup> also show some arrears in the raising of taxes.

But, all things considered, it is not surprising that it was difficult to raise taxes promptly in a community such as New Jersey then was. The continual arrears evidently caused much labor and anxiety to both governors and assemblies, but the system still worked well enough to answer the needs of the province and perhaps as well as any arrangement which would have respected the individual liberty of the people.

The first issue of bills of credit in New Jersey was under Ingoldsby in 1709 and was made to provide funds for the equipment of New Jersey's quota to the Nicholson-Vetch expedition to Canada. The sum issued was £3000. The issue was covered by a tax for the same amount, to be raised in annual instalments for a term of years.<sup>4</sup>

In some respects this first experiment was not very happy. A committee, consisting of Thomas Pike, Capt. Farmar, John Royse and Elisha Parker or any three of them, was named to sign the bills. But Royse died before any of the bills were issued. The survivors then,

<sup>1</sup> *Assembly Journal*, Feb. 5, 1727-8.

<sup>2</sup> *Ibid.*, July 1, 1730.

<sup>3</sup> *Ibid.*, Aug. 11, 1733.

<sup>4</sup> *New Jersey Archives*, vol. iii, p. 468. The act designated special

without any authority, associated with themselves Adam Hude to sign the bills. Some of the bills Hude signed with all three of his colleagues, but most of them with only two. Moreover the form of the bills which the committee caused to be printed was thought to be not exactly like that specified in the act.<sup>1</sup>

Difficulty naturally resulted, and it seems probable that the colony actually suffered loss through the hesitation of merchants of neighboring colonies to accept the bills.<sup>2</sup> The matter naturally came up at the next meeting of the assembly, and the representatives prepared a bill "for Amending and Explaining the Act for the Currency of Bills of Credit for £3000." The object of this measure was to legalize what the commissioners had done and enforce the currency of the existing bills. But the council, which desired only to involve the leaders of the proprietary party in trouble, amended the bill.<sup>3</sup> Meanwhile petitions were received from numerous merchants of New York and Philadelphia, among whom were Peter Fauconnier and William Trent, praying that the house would not confirm the existing bills, but that they might be heard.<sup>4</sup> The hearing was given, and so effective were the statements of the merchants that the house accepted the council changes in the bill.<sup>5</sup> The bill, however, was not acted upon further by the council and so was lost. This result may have been partly due to the sharp feeling between the houses which had resulted from the work of the joint committee of investigation into the

<sup>1</sup> *New Jersey Archives*, vol. xiii, p. 414.

<sup>2</sup> *Ibid.*, vol. xiii, p. 417.

<sup>3</sup> Previously it had sent down a bill declaring the bills of credit null and void. But the house rejected it immediately. *New Jersey Archives*, vol. xiii, p. 419.

<sup>4</sup> *Assembly Journal*, Jan. 27, 28, 1709-10.

<sup>5</sup> *Ibid.*, Jan. 28, 1709-10.

handling of the Canada expedition and the issue of the bills of credit.

After receiving the report of its committee, the council passed a set of resolutions declaring that Pike, Parker and Farmar had acted illegally and committed a breach of trust. Hude had committed a high crime and misdemeanor. Such conduct was said to be an encouragement to counterfeiting. All bills signed only by Hude and two others were declared void, and all four persons were said to be guilty of the grossest misconduct. An attack was also made upon the managers and the commissary of the expedition. Though a statement of the accounts of the expedition was laid before the assembly by Gordon and Basse, who had been employed to go over them, the house took no formal action thereon.

The financial difficulty thus created added to the troubles under which the province was laboring when Hunter took office. Some legislation regarding the bills of credit was, of course, absolutely necessary, and in spite of the bitter conflict between the council and general assembly which spoiled the session of 1710-11, an act was passed "for Amending and Explaining an Act entitled an Act for Enforcing the Currency of £3,000 Bills of Credit." This declared the existing bills legal. But the measure was much weakened by the loss of an amendment declaring the offer and refusal of such bills legal payment of all debts.<sup>1</sup>

The session of July, 1711, was called by Hunter in order to make provision for New Jersey's quota to the Walker expedition against Canada. The assembly voted to do so by the issue of new bills of credit to the value of 12,500 ounces of plate.\* As in the previous case,

<sup>1</sup> *New Jersey Archives*, vol. xiii, p. 416 *et seq.*    <sup>2</sup> *Ibid.*, vol. iv, p. 64.

these were to be sunk by a tax for the raising of £5,000. This tax was to be paid in ten yearly instalments, and was to cover also the interest on the old bills and the cost of raising both taxes.<sup>1</sup> The new issue was thus again made in response to a patriotic need. The bills of credit were now nevertheless fastened upon the colony for several years, and the handling and sinking of the bills became naturally one of the chief subjects of consideration at sessions of the legislature of the province. The bills of credit undeniably filled a need in supplying the province with a currency. Yet the system brought with it real dangers, though these did not show themselves at once. The issues of the bills up to the point we have reached had certainly been rendered practically necessary by the burdens of the war.

During the session of 1713-14 it, however, appeared that Thomas Gordon, the treasurer, had in his hands the sum of £999 13s 3d over and above the cost of the recent abortive expedition.<sup>2</sup> The assembly promptly appropriated this amount for the support of the government from June 23, 1712 to Sept. 23, 1713. This measure was one of the few formally confirmed by the Crown during the union period.<sup>3</sup> But immediately afterward the representatives prepared and carried through a bill to "Continue and Revive the Currency of the Bills of Credit Appointed to be Sunk in the year 1712 and

<sup>1</sup> *Assembly Journal*, July 10, 11, 12, 1711. The method of levying the tax was like that of the regular taxes for support of the government. Special treasurers were again named in the act; Gordon for East Jersey, and Thomas Gardiner for West Jersey.

<sup>2</sup> *Assembly Journal*, Jan. 23, 1713.

<sup>3</sup> *New Jersey Archives*, vol. iv, p. 217. Cornbury, now Earl of Clive.

1713 and to Enable Thomas Gordon, Treasurer of this Province to pay in the said Bills, the Several Sums of money due to Several persons having warrants etc.”<sup>1</sup> This is the first indication of any desire on the part of colonists to make the bills of credit a permanent feature of their finance. The measure seems to have been passed with little notice by the governor, while the home authorities do not refer to it at all.

During the third, or Chesterfield, session of the seventh assembly there were further developments. Gordon submitted the accounts of the bills of credit he had issued in accordance with the act of 1713-14. But as he had not brought with him all the bills of credit in his possession, he was required to go to Amboy and fetch them.<sup>2</sup> Eventually the bills of both the £3000 and the £5000 tax were examined by the committee of the council, and forthwith sunk and destroyed with the exception of £8 5s which were found to be counterfeit.<sup>3</sup> The center of the stage was then seized by Jeremiah Basse, who had only recently been taken into favor by Hunter.<sup>4</sup> Basse delivered a speech upon the financial situation which seems to have been regarded as such an effort that it was reported at length in the *Assembly Journal*; the only instance during the union period of a recorded speech by a member of either house. Basse described the position of the province in terms indeed affecting. If the taxes were paid up, all the bills of credit would have been redeemed and money would be in the treasury. But now they were indebted £1700 and

<sup>1</sup> *Assembly Journal*, March 5, 1713-14; *New Jersey Archives*, vol. xiii, p. 541.

<sup>2</sup> *Assembly Journal*, Jan. 3, 1716-17.

<sup>3</sup> *Ibid.*, Jan. 10, 11, 1716-17.

<sup>4</sup> *Ibid.*, Jan. 15, 1716-17.

odd in bills, and the treasury was empty. Their ill circumstances were increased by the deadness of trade, the poverty of the province and the cheapness of its products. But the chief causes of their woes were the disastrous expeditions to Canada and their own discords. The negligence of their officers and the scarcity of money had also contributed. The veteran politician then made a touching plea for unity on the lines of the golden rule. But the situation must be met. To levy a new tax was impossible. It would be foolish to levy money at interest. Therefore he wished a new issue of bills of credit secured by an indubitable sinking fund. This means he thought in every way the most easy and expedient for paying their debts.

After debate the house acquiesced in this irresistible conclusion and named a committee to draw a bill for the issue of more paper money.<sup>1</sup> Accordingly an act entitled "An Act for the Currency of Bills of Credit up to 11,675 ounces of plate" was prepared and passed.<sup>2</sup> The paper money system was thus definitely continued.

No further legislation upon the currency was necessary until 1723.<sup>3</sup> The provisions already made were, however, carefully carried out. In the session of 1718 bills of credit to the amount of £3,436 17s 6d were sunk. £1,827 15s of this sum was composed of new bills.<sup>3</sup> In 1722 the finances were found in a satisfactory state, and the taxes were declared sufficient to redeem all the bills.<sup>4</sup>

The session of 1723, under Burnet, is notable for the introduction of a new feature into the financial system of



such a system had long been under contemplation, is proved by the fact that, in 1716, a curious paper had been submitted to the assembly by Judge Pinhorne, who had been for some time in political retirement, arguing against the plan which he thought would be advanced of loaning sums in bills of credit to the inhabitants of the colony at 5 per cent. upon landed security.<sup>1</sup> He urged, instead, the loaning of the sums gratis upon proper security, one-twentieth to be repaid annually in silver. The silver returned could be easily put out at common interest, and the income would make a sure provision for sinking the bills and give the province a handsome profit.

We fortunately have the full text of the act of 1723 "for an additional support of this government and making current £40,000 in bills of credit for that and other purposes therein mentioned."<sup>2</sup> As Burnet himself explained to the Lords of Trade, the colony had now fully determined to have paper money.<sup>3</sup> His instructions, however, allowed bills of credit to be issued only in acts for support. Hence the peculiar title and form of the bill. The act itself set forth that many petitions<sup>4</sup> had been received stating that the silver and gold formerly current had been almost entirely exported to Great Britain, a fact which involved the Jerseys in hardship for want of a currency. New York and Pennsylvania had remedied this want by issuing bills of credit, but these were not legal tender in New Jersey.

Therefore the assembly enacted that bills of credit to the amount of £40000 according to the Queen's proclama-

<sup>1</sup> *New Jersey Archives*, vol. iv, p. 166.

tion be forthwith issued. These were to be 4000 bills of £3 value, 8000 of £1 10s., 8000 of 15s., 8000 of 12s., 8000 of 3s., 12,000 of 1s. 6d., and 14,000 of 1s. The form of the bills was carefully described, and a committee was named to sign, number and indent them. The committee consisted of John Parker, Peter Bard, R. L. Hooper and James Trent, or any three of them. They were directed to administer an oath to the printer to prevent fraud on his part like the striking of extra copies. When the bills were signed, £3000 was to be given to the treasurer of the Eastern division, £1000 to the treasurer of the Western division and the rest to the commissioners of the loan offices in the several counties. The sums to be given to the several counties were specified in the bill, Monmouth receiving the greatest amount, £6,033 and Cape May the smallest, £1,115.

Two or three reliable persons were then named as commissioners of the loan office in each county. The list included such names as Col. Josiah Ogden of Essex, Thomas Farmar of Somerset, William Trent of Hunterdon, and Daniel Coxe of Burlington. The commissioners were to be put upon proper oath and security, and the commissioners of each county were declared to be bodies politic and corporate. They were empowered to use a common seal, to sue and be sued and generally to use all powers necessary to their trust.

The commissioners were to lend the bills of credit to such as applied and would give security by mortgage on lands, lots, houses, or other valuable improvements lying in the same county. But this was to be done only after proper advertisement that the commissioners would receive borrowers at a certain day and place, and all were to be served according to priority unless reasonable exception was offered to the titles and values of the lands

offered. If the security was good, the money was to be loaned at five per cent for twelve years in sums not over £100 nor under £12 12s. to any one person. The security taken by way of mortgage was to be double the value of the property, except in the case of houses, when it was to be three times the value. Every year £8 10s. was to be repaid on each £100 borrowed and so for the first ten years, and £7 10s. for every £100 for the last two years. There must also be paid five per cent per annum for the sum borrowed or remaining in the hands of the borrower. Sums lent out after the original date were to be repaid in such instalments that the amounts with interest might be all paid in on March 25, 1736. Borrowers, however, had the option of repaying the entire sums taken up at any time before the date of final payment. Such amounts were to be loaned out again.

If any borrower failed to make payment, his mortgage was to be foreclosed in thirty days and his lands sold to the highest bidder. But all sums resulting from the sale, over and above the amount lent and the interest money, were to be returned to the borrower.

The bills of credit issued by the act were to have currency for twelve years between man and man, but should be received as good by the provincial treasurer for six months thereafter and no longer. Further, they were to be received at the value expressed upon their face. The tender of bills of credit for the payment of any debt was to be just as effectual as if the same sum of specie had been offered. Tender of payment in bills of credit before two credible witnesses was to extinguish any debt. Any person refusing the bills upon the sale of goods or ask-

for which he should be sued, up to one fourth the value of the goods involved or one fourth the money offered plus the whole discount. If the prosecutor was a person living outside of the province, he was to be allowed ten shillings per diem while engaged in the suit and six shillings for witnesses, if they were not above two. These charges were to come out of the costs of the suit. All counterfeiters of bills and those who aided them were to suffer death.

The bill then went on to prescribe in detail the duties and procedure of the commissioners of the loan office. The commissioners were every year to pay the interest money received to the treasurer of the province. Their accounts were to be annually inspected by the justices and the "chosen freeholders" of their county. Bills of credit paid in were to be sunk in the presence of the county board, but the tops and bottoms of the said bills were to be preserved in bundles and delivered to the treasurer. In return for these services the commissioners were to receive payments varying from £9 in Cape May to £25 in Monmouth.

Finally, as has previously been described, the act provided for the better sinking of the bills by levying an annual tax of £1000 for ten years.

As the necessary supplement of this first great loan-office act there was passed at the same session an act "Concerning the Duty of the Commissioners appointed to manage the Loan Offices . . . and for Providing a Remedy in Case any of the Signers of the Bills of Credit of this Province should by Death or Otherwise be rendered incapable of signing the same."<sup>1</sup> This law carefully prescribed the forms of the mortgages and other

<sup>1</sup> Nevill, *Statutes of New Jersey*.

securities to be taken by the commissioners. It named two substitute signers to act in case any of the four men originally named became incapable and ordered that, if further disability occurred, the governor should appoint.

What was probably the opinion of the most thoughtful and experienced men in the province was expressed by Burnet in his letter of May 12, 1724, to the lords.<sup>1</sup> In this he assured them that the act was so carefully framed that the difficulties which had resulted in New England and Carolina from the issue of paper money were here impossible. In this letter there was also enclosed a further argument in favor of the bills by so conservative a man as James Alexander.<sup>2</sup> Alexander pointed out that, as an act of New York making bills of credit current for twenty-one years had been approved, New Jersey must in any case have paper money for a longer period than her own act specified. He advanced the old pleas of the necessity of currency and the hardships brought upon the debtor class by the scarcity of money. An increase in the currency would aid trade and industry of all kinds. Lastly, he showed that New York and Pennsylvania now gained all the interest from the paper money current in New Jersey. This condition was manifestly unjust.

No further important legislation regarding the currency was needed for some time. The session of the assembly in 1725 did, however, pass a bill providing for the naming of new commissioners of the loan office, in case of death or resignation, without compelling the governor to journey to New Jersey and summon a council, as had formerly been required.<sup>3</sup> New commis-

<sup>1</sup> *New Jersey Archives*, vol. 1, p. 96.

<sup>2</sup> *Ibid.*, vol. 1, p. 97.

sioners were to be chosen by the justices of the county, with the "chosen freeholders," upon a mandate issued by any two justices upon a written order from the governor. The same act also provided that the sinking of such part of the £4000 devoted by the measure of 1723 to the support of the government as might be necessary might take place before the governor and council alone if the assembly was not in session during the year. This provision was to prevent a large sum in bills from being left for several years in the hands of the treasurer. The act of 1725, however, concerned only matters of detail and made no real change in the system.

The session of 1727 brought more important legislation, legislation which shows at the same time the success of the loan-office system of 1723 and the dangers involved in it. The most important measure was an act "for the making of £24,760 in bills of credit in order to exchange the bills of credit formerly made current in this province by an act passed in 1723."<sup>1</sup> The preamble states that, of the bills issued in 1723, £24,760 were still current. But it had been found that counterfeits of several thousands pounds had been made in Ireland and passed in neighboring colonies. Many of the old bills were also much worn. New bills were therefore to be printed and signed by John Stevens and Isaac Decowe. The new bills were to be only two inches by four in size, so that folding would be unnecessary. They were to be countersigned also by the treasurers of the two divisions respectively. Regulations were also made for exchange-

holding them. The old bills were to be good in transactions between man and man for only five months after the ensuing first of June, but they were to be received in exchange for a whole year and no longer. Advertisement of the necessity of exchanging the bills was to be made by the treasurers in New York and Philadelphia papers. The currency of these new bills was to be for the same period as had been enacted for the original £40,000. Finally, as a further precaution against frauds, two boards of inspectors were appointed, one for each division. These inspectors were to administer oaths to the treasurers and signers, to attend and see the cancelling of the old bills, and to have some supervision over the treasurers in their work of exchanging the bills.

In the same session a bill was passed reducing by nearly one-half the salaries of the commissioners of the loan offices.<sup>1</sup> It was said that experience had shown that the previous salaries were excessive.

Under the weak Montgomerie the advocates of an increased paper currency evidently met little check; and New Jersey, like so many frontier communities, sought increased prosperity in an increased currency. In 1730 the assembly passed an "Act the better to Enable the Inhabitants of this colony to Support Government, Discharge their Engagements in the Loan Offices, and for Relieving their Other Necessities by Making Current £20,000 in Bills of Credit."<sup>1</sup> In its main features this bill was like that of 1723, which we have given at length, and it seems to have been remembered in the province as the "Second Loan Office Act."<sup>2</sup> The £20,000 in bills was to have currency for sixteen years. As before,

the money was to be distributed among the commissioners of the loan offices to be loaned on proper landed security at 5 per cent. interest. One-sixteenth of the sum loaned, with the interest, was to be repaid each year. The form of the new bills was to be like those authorized in 1727, except for such distinction of color as was necessary to separate the two issues. All the arrangements for loaning the bills, obtaining the securities and handling the funds were similar to those of the first land-office act.<sup>1</sup>

There were, however, some few new features. Bills to the amount of £5,000 additional were to be printed and signed, in order to be exchanged for bills which were soiled or worn out. These duplicate bills were to be kept by the treasurers and exchanged gratis. There was also a further reduction in the salaries of the loan commissioners. As before, payment of principal borrowed might be made in gold, silver, or wheat, at a discount of four pence per bushel on the selling price at New York or Philadelphia. Old bills of credit might also be received.

This act levied no tax to secure any part of the issue, nor did it specify how the interest money was to be expended. In these respects it marked an advance in the paper money idea. The same assembly, moreover, passed an act "to enforce the payment of the incidental charges of this government out of the interest money by a former law of this province subjected to future appropriation."<sup>2</sup>

<sup>1</sup> These bills were: 625 of £6, 1250 of £3, 2500 of 30s., 5000 of 15s., 7500 each of 12s. and 6s., 10,000 of 3s., 12,500 of 1s. 6d., and 16,250 of



With regard to the second land-office act, Montgomerie did so far respect the wishes of the lords as to insist upon the addition of a clause suspending its operation until the pleasure of the Crown was learned. But he wrote home, vigorously advocating the passage of the law on the ground that the province was suffering from a contracted currency. The measure was approved by the king in council, May 4, 1732, after the receipt of a memorial from Richard Partridge, New Jersey's efficient agent.

Under the circumstances, it was only natural that the next assembly—that of 1733—should pass a third land office act for the making of £40,000 in bills of credit. The preamble set forth that, since the bills previously issued had obtained wide circulation in other colonies, and since three-fourths of the £40,000 in bills formerly made current had been retired, the colony was, notwithstanding the recent issue of £20,000 in bills, suffering from an insufficient currency. The act then went on to authorize the issue of the £40,000 of new bills. £10,000 more were also to be printed and exchanged by the treasurers for old and soiled bills, as under the act of 1730. The bills were to have currency for sixteen years between man and man, but were to be taken by the treasurers and commissioners for six months more. As under the earlier loan acts, the bills were to be distributed among the counties and loaned at five per cent interest. The provisions for repayment were like those of 1730.

<sup>1</sup> *New Jersey Archives*, vol. v, p. 289.

<sup>2</sup> *Ibid.*, vol. v, p. 304.

<sup>3</sup> Nevill, *Statutes of New Jersey*; "the Third Loan Office Act."

<sup>4</sup> These bills were as to denomination: 1000 of £6, 2000 of £3, 4000 of 30s., 8000 of 15s., 12,000 of 12s. 6d., 16,000 of 3s., 20,000 of 1s. 6d., 26,000 of 1s. The additional bills were: 250 of £6, 500 of £3, 1000 of

It was ordained, however, since there had been complaints against the management of some of the loan offices, that there should be a new choice of commissioners. This choice was to be made by the justices and chosen freeholders of each county, upon notice by the provincial secretary. The salaries of the commissioners were again raised, as the amount of business they were to handle would be greater. Their emoluments were to be paid from the interest money received.

It was established also that, if by any possibility there was such failure in the payments of any county as to cause a deficiency, the county board was to levy said sum upon the inhabitants. Such levy was, however, not to be made until after sale of the premises mortgaged. In respect to its other provisions the act of 1733 was similar to those of 1723 and 1730.

The assembly passed still another bill appropriating part of the interest money to the incidental charges of the government. This measure had, however, a clause suspending its operation till it could be approved by the Crown, and it was eventually confirmed.

Cosby was evidently not as enthusiastic over paper money as Burnet and Montgomerie. He, nevertheless, wrote to the lords in favor of the new act.<sup>1</sup> All were agreed that it was necessary, he said, and he was so pressed that he could not avoid passing it. The colony certainly labored under great need of a currency. There was, however, a conflict in London regarding the fate of the act. A list of reasons was presented to Secretary

Popple by John Sharpe, solicitor, for the disallowance of the act.<sup>1</sup> Among other arguments he said that New Jersey had already issued £60000 in bills, of which £30000 still existed. To issue more would lessen the credit of the former bills. Before the passage of the measure New Jersey paper had been preferred to that of New York, but since it appeared that due care was not given to the sinking of the bills, the people of New York were now very unwilling to take Jersey paper. Sharpe likewise took exception to many of the penalties established and to other details of the bill. Richard Partridge once more proved his usefulness to the colony by presenting a reply to the objections of Solicitor Sharp,<sup>2</sup> and the act was eventually approved.<sup>3</sup> It was certainly not radically different in its general character from the earlier laws.

Thus, at the end of the union period, New Jersey was thoroughly committed to a paper currency, and so convinced were her representatives of the advantages to be gained by expanding the issues that there was certainly some danger that the credit of the colony might eventually suffer. It would no doubt be out of place here to undertake any discussion of the principles of finance involved in the issues of the colonial bills of credit. But the reader should be warned to pass no judgment upon the matter without taking carefully into consideration the actual financial condition of the province, and especially the undeniable scarcity of any proper medium of exchange suitable for larger business transactions. It was owing neither to accident nor to any dishonest desire to escape lightly from debts that the people of the Jerseys were a unit in favoring paper money.

Up to the point we have reached New Jersey had suffered few of the evils which came to some of the other colonies through the issue of paper bills. The evidence regarding the rate at which her bills passed is indeed to be obtained chiefly in the statements of those favoring the bills of credit. Yet apparently they were stating only well-known facts when they asserted that the Jersey bills were preferred to those of New York. In 1726 Burnet enclosed in a letter to the lords of trade certain statements regarding their circulating value. One of these was signed by twenty-one merchants of New York.<sup>1</sup> It set forth that at first the New Jersey bills of 1724 decreased in value in New York, passing at the rate of seven shillings as equal to six shillings of New York bills. Later even this was scrupled. But in the second year they gradually rose until Jersey money was preferred. At the time the statement was drawn it was at a premium of from six to twelve pence per pound. A second statement was regarding the value of New Jersey paper money at Perth Amboy.<sup>2</sup> This certificate was signed by fourteen persons, including Andrew Johnstone, Fenwick Lyell and Michael Kearny. It set forth that the bills had always passed current in New Jersey and in Pennsylvania without discount. It was true that in 1725 there appeared a discount of 15 per cent on the bills as against gold. This still existed, but had dropped to five or six per cent, and in small sums had disappeared entirely. In New York the Jersey money was at a premium.

We may accept these assertions without being led

she had been more conservative than several of her neighbors, had avoided their mistakes so far as possible, and thereby gained substantial results.

It is evident that the home authorities regarded the issue of paper money with suspicion. For this attitude results elsewhere had given good cause. The governor's instructions forbade the issue of bills of credit, except in acts of support, unless the measures contained a clause suspending their operation until confirmed by the Crown.<sup>1</sup> All the executives, in writing to their superiors advocating the passage of acts for bills of credit, assumed a defensive tone, which showed clearly that they knew that the authorities at home disliked any policy of inflation. But it is also clear that as regards New Jersey, at any rate, the home authorities objected not so much to the issue of bills of credit as to the immediate employment of the interest money obtained therefrom as a means of lessening taxation.<sup>2</sup> None of the acts for bills of credit were disallowed, nor did the lords of trade reprove governors for passing them. Their attitude regarding the appropriation of the interest has, however, been brought out elsewhere. If not creditable to their firmness, it illustrates at least their caution.

In direct contrast with the attitude of the home authorities stands that of the colonial governors. All of them who had to handle the subject at all approved the paper money policy, while Burnet and Montgomerie made themselves virtually the advocates of the assembly in this respect. By approving the bills of credit the governors gained an increased income for themselves

<sup>1</sup> *New Jersey Archives*, vol. v, p. 3.

and their subordinates, and at the same time made themselves exceedingly popular. Doubtless colonial opinion would not, as Cosby thought, tolerate opposition in this field. But Burnet and Montgomerie were men of honor, men whose careers show that they were willing to face public disapproval if they deemed it in line with their duty. We must suppose that they honestly believed that the conditions of the province required the issue of a paper currency.

## CHAPTER XXV

### THE MILITIA SYSTEM

It is probably impossible, after this lapse of time, to write an accurate and detailed description of the militia system of the province of New Jersey. Fortunately for the colony, its defensive arrangements were never tested by actual invasion or insurrection, and although the outlines of its system may be traced in the colonial legislation, we are only able to infer how fully the laws were carried out. In practice, the military unit was the town company rather than the regiment which was never assembled or exercised as a body. It therefore depended upon local spirit and traditions whether the company was really efficient. It seems highly probable that in those communities of East Jersey which were of New England origin the militia companies were in some degree efficient. On the other hand, it is clear that, owing to the influence of Quakerism on the Delaware, the military arrangements there were never effective. Much evidence goes to show that, considered as a colony, New Jersey was one of the least military in spirit. With the single exception of Pennsylvania, her military system was the loosest and weakest. The disregard of and dislike for military affairs by the inhabitants was a continual complaint of her governors.<sup>1</sup> It was owing to circum-

the colony had no share that this weakness did not bring disaster.

There is one phase of the situation, however, upon which the student may speak with certainty. This is as to the relation between the questions of the militia and the politics of the colony. And, fortunately, it is just this phase of the matter which has most historical importance. Sheltered from attacks as New Jersey seemed to be, it meant little to her own people whether their militia was effective or not. It meant much, however, whether the colony should be compelled by executive influence to maintain a system which was contrary to its spirit, and whether the Friends, though nominally free from religious persecution, should be actually subject to such persecution because of their objection to war.

Among the powers entrusted to the governor, those relating to military matters occupied a prominent place. The governor's commission gave him the title of Captain General.<sup>1</sup> He was given the power to "Levy, arm, muster, command and employ" all inhabitants and to resist and withstand all enemies, pirates and rebels by land and sea. He could transport forces outside of the colony for defense or pursuit of the enemy. The governor could, also, execute martial law in time of invasion, insurrection, or war, and do everything pertaining to the place of Captain General.<sup>2</sup> The right to erect and arm fortifications was given him as well as that to grant commissions to masters of vessels to execute martial law at sea in time of war. This latter power, however, was



Because of the sweeping powers given in the commission, Cornbury's instructions do not give as much attention to military matters as might be expected. He was ordered to see that military training did not interfere unneedfully with the inhabitants of New Jersey; martial law was never to be put into operation without the consent of the council; and whereas the governor had no power to enforce martial law in time of peace, he was to urge the assembly to the passing of a militia act which would provide for the disciplining of the forces of the colony.<sup>1</sup> There were in the instructions certain articles intended to prevent disagreement between the governor and the officers of the royal navy. Cornbury was also required to transmit as soon as possible an account of all defenses and fortifications of New Jersey.<sup>2</sup> Since the defense of New York was too great for that colony alone, the governor was to "dispose" the assembly of New Jersey to contributions for that purpose according to a quota already prepared.<sup>3</sup> If any plantation, and especially New York, were in distress, Cornbury was to give such aid as possible.<sup>4</sup> For greater security, suitable officers were to be appointed in those parts of New Jersey "bordering on the Indians" who, in case of sudden invasion, might raise men and oppose the enemy until they received the governor's directions.<sup>5</sup>

In considering the way in which Cornbury and his successors executed these directions, it must be remembered that a great war was then raging between England and France, that the American colonies were believed to be in real danger of invasion, and that in any case a gov-

<sup>1</sup> *New Jersey Archives*, vol. ii, pp. 523-4.

ernor who showed himself active and successful in military matters was almost sure to win the approval of the home authorities.

In Cornbury's first official letter home, after assuming the administration of the Jerseys, he stated that he had "settled" the militia of the western division and had begun on that of East Jersey.<sup>1</sup> This "settlement" seems to have consisted of commissioning officers to command the companies in the various towns and districts. Originally there was one regiment in West Jersey of which Daniel Coxe was named colonel.<sup>2</sup> There was a company in Cape May,<sup>3</sup> two in Salem,<sup>4</sup> two in Gloucester,<sup>5</sup> one in Burlington Town, and at least two in outlying townships of Burlington county.<sup>6</sup> Each company had regularly three commissioned officers, a captain, a lieutenant, and an ensign. Hugh Huddy was major of the regiment.<sup>7</sup> Richard Townley was originally colonel of the East Jersey militia,<sup>8</sup> but this force was later divided into two regiments, one in Middlesex and Monmouth, the other for Bergen and Essex. There were probably three companies in Monmouth County,<sup>9</sup> two in Middlesex, including Somerset,<sup>10</sup> and two in Essex.<sup>11</sup> The militia of Bergen does not seem to have been "settled" until some time after the other companies. It has been indicated that the regimental organization meant little in practice, the company being the important unit.

But the organization could not be effective without the passage by the assembly of the militia act which Cornbury's

<sup>1</sup> *New Jersey Archives*, vol. iii, p. 6.

<sup>2</sup> *Liber AAA of Commissions*, p. 6.

<sup>3</sup> *Ibid.*, p. 37.

<sup>4</sup> *Ibid.*, pp. 53, 65.

<sup>5</sup> *Ibid.*, p. 69.

instructions ordered him to procure.<sup>1</sup> And the governor's quarrel with the first assembly effectually prevented such legislation while it was in existence. When, however, Cornbury and his allies by the unjustifiable means already described, secured a temporary control of the second assembly, a militia act was carried through as one of the features of the governor's policy.<sup>2</sup>

This act ordered that no persons between the ages of 16 and 60 should remain unenlisted "by themselves, parents or masters" "the space of one calendar month." The penalty for neglect was 10s and so for every month. Every foot soldier was to provide himself with a well-fixed musket or fusee, or if the officer appointed, with a good pike or sword or lance and pistol. Every musketeer was to have half a pound of powder and twelve sizeable bullets and a cartridge box or powder horn. Each person was to appear thus equipped when required under penalty of 5s for not appearing and 3s for want of each article, but the whole fine for lack was not to exceed 5s.

Every horse soldier was to have a good horse of his own with a good saddle, and holsters, breast plate, crupper and a case of good pistols, hanger, sword, or rapier and one-half pound of powder with twelve sizeable bullets. The penalty was 10s for each absence from training, and 10s for the lack of each article, the entire fine not to exceed 15s.

Each soldier was to have an additional supply of powder and bullets at his house, and each cavalryman was to keep a well-fixed carbine with belt and swivel. There was to be an additional fine of 10s for each de-

<sup>1</sup> *Assembly Journal*, Sept. 7, 1704.

<sup>2</sup> *Laws Enacted in 1704* (Bradford print).

fault in this respect, and persons not bringing the said articles into the field when required, were to answer by court martial.

When the troops of horse fell below fifty in number, the colonel was to name from the principal inhabitants treble the number of the vacancies and from such list the governor was to name those to serve.<sup>1</sup> For refusal to serve there was a fine of £5. No soldier was to depart without a discharge from the commander of his troop or company on penalty of 40s., but no officer was to refuse a discharge to any one removing from the precinct or province on "paine" of £5.

All commanding officers were within twelve months to provide for their forces, drums and colors, trumpets and banners at the proper charge of the companies. Once a year all the colonels were to issue warrants to their inferior officers for a diligent search as to whether all their men were duly armed and equipped, and all defects were to be returned to the end that they might be redressed. The penalty for neglect by the officers was £12.

Once every three months the several companies in each regiment were to meet at the most convenient place for muster and exercise. The command for this was to be given by the Captain-General, and if occasion required he might order more frequent musters. While in arms the soldiers were to give due obedience to their officers, and to observe such rules and articles of war as should be established by the Captain-General with the advice of a general council of war. Copies of these articles were to be given by the colonels to their officers, that they might be read every three months to the soldiers. If any soldier should afterward take revenge for anything

<sup>1</sup> There are no indications that the troops of horse were ever organized.

done by an officer when under arms, he was to be tried by court martial and punished as if the offense had been committed under arms; but punishment was not to extend to life or limb. Officers who neglected to perform the commands of their superiors were to be tried by court martial and punished by cashiering or otherwise.

Any person wounded in the public service was to be cured at the public expense; and anyone sued or molested for anything done under the militia act itself might plead it and recover triple costs.

The provisions relating to the collection of fines had special importance. All fines from those below the rank of captain were to go to pay the charges of the several companies. They were to be levied before the next exercising day, if necessary, by distress and sale of the offender's goods upon the captain's warrant addressed to the sergeant or corporal. If no distress was found, there was to be punishment by riding the wooden horse, or being tied neck and heels not exceeding an hour. If the offender was a servant, the master's goods were to be liable, and any sergeant or corporal refusing to levy distress was to forfeit 40s. If said fines were not sufficient to pay the charges of a company, what was wanting was to be paid by the soldiers on warrant from the colonel.

The fines of captains and higher officers were to be levied on warrant from the captain-general, or the chief field officers where the offenders were. One-half was to go to the captain-general and one-half to the commander of the regiment.

The rest of the act related to a system of alarms. It was forbidden to fire any arms after 8 o'clock at night unless in case of alarm or some lawful occasion, such as

shooting deer, turkeys or wolves. Four muskets distinctly fired or two muskets and beating a drum were to constitute an alarm. Any person neglecting to forward an alarm or guilty of firing after 8 o'clock, was to be punished by court martial, though as usual, such punishment was not to extend to life or limb. Every man who did not, upon alarm, repair armed to his colors, was to be fined £5. £4 was to be the penalty for masters of ships at anchor in the province for every gun-fire or drum-beat after 8 o'clock.

The militia act of 1704 provided for a system probably as strict as existed anywhere in the northern colonies. The fines were, comparatively speaking, heavy; a court martial was provided for; and the officers of the companies were, of course, to be appointed by the governor, not elected as in New England. If it had been enforced New Jersey must have had a fairly effective defense.

But, unfortunately, beneath the strict provisions of the act lay the desire on the part of Cornbury and his advisers to injure the Quaker interest in West Jersey. The fines for refusing to enroll, for refusal to attend musters, etc., were so heavy as to lay a real hardship upon the Friends. But the most unjustifiable feature was the lack of any provision by which, when the goods of a person had been seized by distress, and sold to cover the penalties, the "overplus" should be returned to the owner. Through the omission of such a clause Cornbury's officers were permitted to rob the Quakers with impunity.

So manifestly unsuited was such a drastic act to the circumstances of the colony that it, together with all but one of the other acts passed by the second assembly, was disallowed by the crown.<sup>1</sup> During the period in which

<sup>1</sup> The disallowance was, however, upon the ground that the sums of

it was in operation it certainly failed to give New Jersey an efficient militia. On the other hand, it gave rise to the bitterest complaints and objections from those who felt its severity and indeed was one of the most important grievances against Cornbury's government. So bitter was the feeling in West Jersey that the provisions of the law could not be carried out. Eight of the constables of Burlington County refused to levy distresses upon Quakers who would not serve in the militia, and were prosecuted by the attorney-general upon an information, but without being convicted.<sup>1</sup> When distresses were levied, no one would buy the articles seized. Lewis Morris declared that there was a certain house in Burlington filled with all sorts of property belonging to the Quakers. He said also that the seizures amounted to £1,000 a year, about ten times the real value of the fines.<sup>2</sup> In Salem, where William Dare, one of Cornbury's henchmen, was both sheriff and captain, there were similar abuses.<sup>3</sup> When Cornbury recommended at his last meeting with the assembly that the militia law be re-enacted, the house refused point blank to do so, though at the same time it expressed its willingness to provide for the defense of the province by any reasonable means.<sup>4</sup>

Thus, owing to the foolishness and selfishness of the money levied by the act were to be paid into the hands of such persons as the governor should appoint and were to be applied for such uses as the governor should direct, instead of being paid to the receiver general only for purposes specified in the act itself. The arrangement to which the Lords objected was highly characteristic of Cornbury's administration. *New Jersey Archives*, vol. iii, p. 324.

<sup>1</sup> *Minutes of the Supreme Court* (1704-1715), p. 57.

<sup>2</sup> *New Jersey Archives*, vol. iii, p. 280. See also *Ibid.*, vol. iii, p. 365; vol. iv, p. 44.

<sup>3</sup> *Assembly Journal*, Jan. 4, 1710-11.

<sup>4</sup> *Ibid.*, May 11, 12, 1708.

governor, New Jersey was left without any militia legislation. Under such circumstances it need hardly be said that Cornbury also failed completely in securing the £250 fixed by the home authorities as New Jersey's contribution for the fortification of New York.<sup>1</sup> Even the subservient second assembly never seriously considered granting this. New Jersey herself had no fortifications, and the governor took no steps toward erecting any. Cornbury did indeed grant commissions to at least four privateers against the French. They were the sloop "Resolution" of 25 tons and 40 men; the brigantine "Good Intent" of 75 tons and 9 guns; the brigantine "Abraham and Sarah" of 95 tons and 12 guns, and the sloop "Diamond" of 80 tons and 4 guns.<sup>2</sup> But surely no part of his excellency's administration was a more abject failure than this very field of work in which, owing to his previous experience, it might have been hoped that he would be especially successful.

Lord Lovelace, on the contrary, readily secured the passage of a militia act<sup>3</sup> to run for three years, which was renewed by Hunter's first assembly of 1711.<sup>4</sup> The text of this law has apparently not been preserved, but it is clear that it did not contain the objectionable features of the act of 1704. It seems, therefore, probable that the penalties for refusal to serve in the militia or for negligence were so relaxed that hardship was imposed on no one. But, however necessary it may have been to preserve the religious liberty of the Quakers, a home defense organized in their interest could not



Under Ingoldsby and in the early years of Hunter's rule, the province was forced to give much thought to military affairs. This activity was, however, in regard to New Jersey's share in the two futile expeditions against Canada, and did not relate directly to the militia system.<sup>1</sup> It may, therefore, be best discussed separately.

Hunter handled the question of the militia in much the same spirit as the other political problems which he was called upon to solve. Among the acts prepared by his first assembly was one for the relief of persons injured by the distresses levied under Cornbury's militia law.<sup>2</sup> The new governor regarded this measure with approval, but it was rejected by the council along with most of the other measures of the session. As a part of his war upon the old administrative ring, however, Hunter retired nearly all of Cornbury's militia officers. Johnstone and Farmar became colonels of the East Jersey regiments,<sup>3</sup> while Daniel Coxe in West Jersey was superseded by John Hamilton, son of the last proprietary governor.<sup>4</sup> The control of the town companies was also taken from the hands of men like Dare and Salter who had been so officious under the late régime.<sup>5</sup> ✓

✓ In 1714 a new act was carried "for Settling the Militia."<sup>6</sup> By accepting this law, Hunter evidently believed that he was securing the best provision for the militia which the circumstances of the colony permitted.<sup>7</sup> As this act remained the basis of the system for the rest

<sup>1</sup> Ingoldsby gave a commission to the privateer ship "Resolution" of 300 tons and 20 guns.

<sup>2</sup> *New Jersey Archives*, vol. iv, p. 58.

<sup>3</sup> *Liber AAA of Commissions*, pp. 151, 152.

of the Union Period we may recite its contents in some detail. Every captain was required forthwith to make a list of all men in his precinct between 15 and 50. Those exempted from the military service were ministers, physicians, school-masters, civil officers of the government, the representatives and slaves. Every person "so listed" was to be armed with a musket or fusee, well fixed, a sword or bayonet, a cartridge box or powder horn, a pound of powder, and twenty sizeable bullets. They were to appear in the field armed twice every year, in March and September, at places appointed by the captains. But they were to remain in arms but one day. Besides these semi-annual trainings the militia might be summoned on other occasions by written order from the commander-in-chief. At the musters the men were to be taught the use of arms by their officers. If disobedient, they were to suffer the punishments of martial law, not extending to life and limb.

The act provided the usual system of fines for lack of equipment,—for lack of musket 2s.; if not well fixed 1s.; sword 1s.; pound of powder 1s.; one pound of bullets 1s. Said fines were to be levied by the sergeant or corporal on warrant from the captain upon the goods of the offenders, if they refused to pay. The fines were to go for drums and colors.

Persons failing to appear at the appointed places were to pay 5s. to the support of the government for each offense in default of reasonable excuse "as sickness," such

treasurer was to keep account of all sums received in this way and was to have £1 of every £100 for his trouble. If the fines mentioned before were not sufficient to provide any company with drums and colors, the sum needed should be allowed by the treasurer out of the other fines.

In case of actual invasion it was to be lawful for the captain-general to call as many of the militia as necessary to repel the enemy. He might order such as he saw fit to pursue the enemy into neighboring governments.

It was to be lawful for such captains as lived on the seaside or near the Indians to call together such men as necessary in case of descent or invasion. If during time of war or danger the governor should direct that a watch be kept, the commanders of the regiments were to issue orders to the captains to appoint men to serve at the fires and at the places set. But the watch was to be relieved so that all should serve alike. Any person refusing to watch was to forfeit 5s., but anyone leaving the watch 40s.

Anyone appointed by the captain as sergeant or corporal who refused to serve forfeited 20s. None, however, were to be appointed save such as appeared in arms.

The act was to continue for seven years and no longer.

The simple provisions of this act contrast in a rather striking way with the clauses of Cornbury's law of 1704. Aside from the omission of all mention of troops of horse, the spirit of the acts was quite different. The new law made the fines for non-compliance exceedingly small, and did away with the courts martial. It provided also in a skilful way an easy escape for the Friends. It was made to rest entirely with the captains of the companies whether the Quakers should be fined at all.

The fact that this militia law gave such excellent satisfaction seems to show that it bore heavily on none, and that the militia was therefore not highly efficient. Indeed, with only two trainings a year, no high degree of military skill could possibly have been developed. It is certainly very noticeable that Hunter, himself a trained soldier, rarely speaks of the military affairs of the Jerseys in his correspondence with the home authorities. This fact may be partly explained by the termination of Queen Anne's War. Colonel Coxe and his adherents, however, endeavored to make much out of what they called Hunter's neglect to keep the militia under proper order and discipline.<sup>1</sup> But he, in reply, declared that the militia had been in very good order ever since Coxe and his assistants were turned out of it.<sup>2</sup> The governor was evidently satisfied with the best arrangements which would work smoothly, and with his usual common sense, was not willing to make demands upon the colonists to which he knew they would not quietly submit. Near the end of his administration, Hunter estimated the effective strength of the militia at 3000.<sup>3</sup> There were now three separate regiments in East Jersey, while West Jersey had two, one for Burlington and Gloucester, and a new one under Isaac Sharp as colonel for Salem and Cape May.<sup>4</sup>

Governor Burnet, on the other hand, as a part of his general policy of activity against French aggression from Canada, showed himself especially desirous of

<sup>1</sup> *New Jersey Archives*, vol. iv, p. 309.

<sup>2</sup> *Ibid.* vol. iv, p. 309. The governor held that the militia was not

rendering the militia more efficient. In April, 1721, during his first meeting with the general assembly, Burnet communicated to his council his full instructions relating to military affairs and to the securing of aid for New York.<sup>1</sup> At the same time he read a letter from the Indian commissioners at Albany, complaining of French encroachments among the Five Nations.<sup>2</sup> Burnet desired that proper places for fortifications be considered, and that a new bill for the regulation of the militia be prepared.<sup>3</sup> The governor, in addition, announced his purpose of establishing a new regiment in West Jersey "that they might have three as well as East Jersey."<sup>4</sup> The council proceeded to consider these matters as a committee with Lewis Morris as chairman. But two of the councilors, John Wills and John Hugg, refused to join in the report since they were Friends.<sup>5</sup> The members remaining were Morris, Anderson, Hamilton and Peter Bard. After brief deliberation they reported that, in their opinion, the French aggression among the Five Nations was a danger to all British subjects, and that all the colonies concerned should contribute to the defense of the frontier. They, however, regarded the erecting of fortifications in the Jerseys as useless. Such work could not prevent Indian incursions from the west, and the distance of the settlements from the coast, and the difficulty of landing "so as to come at them," were a sufficient protection on this side. All that would serve a practical purpose was to put the militia into "as good a posture of defense" as possible, and this should be done with all speed.<sup>6</sup>

The council ordered that a bill be brought in to render the militia more serviceable. This bill was duly prepared, but the assembly, then wrangling with Burnet, amended the bill so that it provided merely for the continuation of the existing arrangements. As the governor and council would not accept such a change, the bill was lost.<sup>1</sup> Even Burnet's well-meant efforts to arouse interest in the subject by submitting an account from James Logan, Secretary of Pennsylvania, of a marauding expedition of the Iroquois into Virginia fell flat.<sup>2</sup>

At the next session, held in the spring of 1723, however, after an understanding had been reached between the governor and the representatives, a new militia bill was actually passed. Yet this bill, after all, differed only in minor details from that of 1714.<sup>3</sup> But there was an additional clause by which every "listed" man was to keep always at his house a "well fixt" musket,  $\frac{1}{2}$  pound of powder, and 12 sizeable bullets. Captains were empowered to order their sergeants and corporals to examine once a year, and those found lacking were to pay 3s. This act, like that of Hunter, was to run seven years, but was then to continue in force until the end of the next session of the assembly. The gaining of the law of 1723 was certainly not a very great achievement for Burnet after all his efforts. It did, however, settle the question of the militia for the rest of his administration.<sup>4</sup>

Nevertheless the governor did succeed in establishing a third regiment in West Jersey. This was for the

<sup>1</sup> *New Jersey Archives*, vol. xiv, p. 198.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Laws Enacted in 1722-3* (Bradford print); *New Jersey Archives*, vol. v, p. 54.

<sup>4</sup> As Burnet became Americanized, he certainly showed less anxiety about carrying out his instructions to the letter.

newly-established county of Hunterdon, which was being settled very rapidly. Burnet named as colonel Daniel Coxe, who had been such a bitter opponent of Hunter, thus showing his desire that the old feuds be given up.<sup>1</sup>

In 1730, under Montgomerie, the militia act was renewed for another period of seven years.<sup>2</sup> The measure seems to have been passed as a matter of course and to have caused little discussion. It was almost exactly like the law of 1723, but it is significant that the fine for absence from training was reduced from 5s. to 3s. 6d.

In the efforts to attain a separate government for New Jersey, which began about this period, one of the arguments advanced was that the entire inefficiency of the militia was due to the connection with New York. Lewis Morris, when advocating separation to the home government, declared that the militia was in a bad condition.<sup>3</sup> The penalties imposed by the acts were so small that people preferred to pay them rather than appear in arms. Scarcely a man could be found willing to take a commission. The secretary had, indeed, informed Morris that there were several bundles of commissions lying in the office which had been made out by Montgomerie, but which the persons named would not take out. There seems no reason to doubt that while Morris' statement may have been somewhat exaggerated, it was essentially true. There was also truth in the later statement of Mr. Partridge, the agent of the colony, that many of the militia officers lived outside the province.<sup>4</sup>

It seems clear, then, that at the end of the union period, New Jersey had attained something more than

<sup>1</sup> *Liber AAA of Commissions*. p. 187. Trent was the first colonel.

the usual colonial standard of ineffectiveness in her militia system.

Aside from maintaining her militia in this half-hearted way, New Jersey had taken little part in the military affairs of the colonies as a whole. In both of the fruitless land expeditions against Canada, undertaken toward the close of Queen Anne's war, New Jersey participated by sending the quotas required of her. The quota fixed by the Crown as her contribution to the Nicholson-Vetch expedition of 1709-10 was 200 men.<sup>1</sup> When the general assembly of the province was called by Ingoldsby to make the necessary provisions, the members, though professing their willingness to obey the queen's orders, displayed great lack of enthusiasm. Reasons were at once presented why New Jersey's quota should be reduced, but Nicholson and Vetch replied that they had no power to admit reductions.<sup>2</sup> The question was then considered whether New Jersey would send a detachment of her militia, but it was voted that the expedition should be supported only by voluntary enlistments.<sup>3</sup> It was, however, decided to raise £3000 by the issue of bills of credit to pay the expenses of the expedition. But when the council, in its usual excess of zeal, sent down a bill to prevent persons from leaving the province to escape service it was flatly rejected.<sup>4</sup>

The question of the expedition, as was the case with nearly all military matters in the Jerseys, soon came to be entangled with the subject of Quakerism. The transparent and awkward, yet withal dangerous, efforts of



Ingoldsby and his supporters to compel the Friends to shoulder the blame for defeating the expedition are fully discussed elsewhere. Suffice it to repeat here that the measures for furnishing the quotas were eventually passed though only after considerable delay.

The two companies of "fusilleres" which composed New Jersey's quota seem to have been readily filled by voluntary enlistment, and under Captains John Harrison and Jacob Spicer<sup>1</sup> took part in the futile march to Wood Creek. But the failure of the expedition involved the colony in debt and discouragement.

The fifth assembly proceeded in true modern style to hold an investigation into the conduct of those connected with the expedition. This was carried on by a committee of the council acting with the assembly in committee of the whole,<sup>2</sup> but it is evident that a majority of the members were actuated by political motives. Several of the men prominent in the managing of the expedition were members of the proprietary party. After the investigation, the committee of the council, therefore, presented and entered upon the council journal a report, and the council passed a set of resolutions.<sup>3</sup> These declared that the commissioners named to sign the bills of credit had acted illegally and were guilty of the gravest misconduct. Farmar and Parker who were commissioners for managing the expedition were accused of betraying their trust as was also John Harrison, the commissary. But in the expression of these opinions the house, naturally, did not join. When the house sent up a bill for punishing deserters during the expedition, the council amended it

<sup>1</sup> *Liber AAA of Commissions*, pp. 103, 104.

so as to compel Farmar, Parker, Hude and Harrison "to refund such moneys as they had cheated the province of."<sup>1</sup> The bill was of course lost by the refusal of the representatives to accept the amendment. Out of this unfortunate difference no result came except an increase of the already bitter factional feeling.

In July, 1711, under Hunter, New Jersey was again called upon by the Crown to take part in an attack upon Canada. Hunter, in his speech to the assembly, called upon the assembly to levy 180 men for each division and to provide for their support.\* He also submitted his instructions on the subject, stated that the royal fleet and forces had arrived and asked despatch. The assembly which was in complete accord with the governor used all speed in preparing a measure for the raising of the equivalent of 12,500 ounces of plate in bills of credit.<sup>3</sup> As before, however, the quotas were to be filled entirely by volunteers. The house, nevertheless, acted loyally and drew up a patriotic address to the Queen. In promptness it indeed left little to be desired.

Although the Walker expedition was even more disastrous in its results than that of Nicholson and Vetch, it led to no such scandals and quarrels in New Jersey. Although the usual care was taken by the assembly in auditing all the accounts connected with it,<sup>4</sup> no more special investigation was deemed necessary. This result was due in part no doubt to the ousting of Cornbury's ring from the council.

<sup>1</sup> *New Jersey Archives*, vol. xiii, p. 420.

<sup>2</sup> *Ibid.*, vol. xiii, p. 477.

<sup>3</sup> *Assembly Journal*, July 10, 1711 *et seq.*

<sup>4</sup> *Ibid.*, Feb. 6, 1713-14. The committee which examined into the accounts reported everything regular and vouched for.

The conclusion of peace with France seems to have been received in New Jersey with a feeling of relief. Thereafter the people of the Jerseys troubled themselves little about possible dangers from Canada or the sea. The general opinion in the colony seems to have agreed with that of the disrespectful John Case against whom complaint was made before the council on July 4, 1721, by David Lyell.<sup>1</sup> The said Case had been guilty of "slandorous speeches against the government." He had declared that the country would not be frightened by Burnet's tales of Canada Indians, but that he himself would fight all that came to attack New Jersey. It should be said, however, that, though the valiant Case had no fear of Indians, he fled from home ingloriously on the approach of the sheriff and could not be found.

<sup>1</sup> *New Jersey Archives*, vol. xiv, p. 201.

## CHAPTER XXVI

### THE CHURCH OF ENGLAND IN THE JERSEYS

WHILE both East and West Jersey remained without established churches, the story of the efforts made to introduce and spread Anglicanism in the colony has especial interest to the student of political history because of their influence upon the party struggles in the province. Curiously enough Cornbury and his clique, Coxe, Sonmans, Hunter, Burnet, Morris, Colonel John Hamilton and the most notable leaders of the Perth Amboy proprietors, Gordon, Johnstone and Willocks, were all Anglicans. Yet even so, their political struggles were not devoid of a religious coloring. The other religious elements which were factors in the field of politics were the Presbyterianism so staunchly held by the New England settlers of East Jersey and the Quakerism of many of the leading proprietors and inhabitants of West Jersey. The political influence of the Dutch Reformed Church and of the Baptist congregations of Piscataway, Somerset, Monmouth and Cape May does not seem to have been marked.

The appearance of Episcopacy as an important political force in the Jerseys is to be connected on the one hand with the beginning of the work of the "Society for the Propagation of the Gospel in Foreign Parts," and on the other with the career of the famous George Keith. Previous to the establishment of the royal government there had indeed been certain beginnings of

Anglicanism in the province. We know that Governor Philip Carteret of East Jersey was an adherent of the Church of England, and are told that he frequently attended church at New York.<sup>1</sup> It is highly probable that there were churchmen among those who followed him into the province, but they were entirely lost in the flood of Presbyterianism which came into East Jersey from Long Island and Connecticut. When, however, Perth Amboy was founded as a center of strictly proprietary influence the position of Episcopacy became better. About 1695 several of the East Jersey proprietors applied to Bishop Compton of London for an Anglican clergyman, and in consequence the Rev. Edward Perthuck was sent to the province in 1698.\* To enable him to conduct his work the proprietors arranged that one of the houses which had been built at their general charge should be given as a church. It appears, however, that Perthuck did not remain in personal charge of the congregation, and Lewis Morris, writing in 1700, estimated that all the churchmen in the province if gathered together would make up about twelve communicants.

But meanwhile George Keith had appeared in the province. This remarkable person was a native of Aberdeen, Scotland, and though originally a Presbyterian, was already known as a man of some prominence among the Quakers. He is known to have been for some time a schoolmaster, but becoming acquainted with Robert Barclay and others interested in East Jersey

<sup>1</sup> Dankers and Slyter, *Journal of a Voyage to New York* (Brooklyn,

he was, in 1684, named surveyor-general of that province. This position he filled with considerable ability, his administration being remembered for his effort to run the line of division between East and West Jersey. But in 1689 he removed to Pennsylvania to assume charge of a school in Philadelphia. This place he apparently did not hold long. He was by this time well known both as a speaker and a writer among the Quakers, and he now seems to have devoted himself entirely to these lines of activity. There is no doubt that he was gifted as a preacher and was, indeed, a man of superior intellectual capability.

But Keith was a natural leader, and soon gathered a party about himself, thus occasioning the first serious division which the Society of Friends had known. The chief object of Keith and his followers, the "Keithian Quakers," was to secure a stricter discipline among the Friends, whom they regarded as having fallen away from the primitive simplicity preached by Fox. But though he won many supporters, the majority sentiment among the Friends was against him, and after a violent controversy he was practically expelled from the society.<sup>1</sup> Under these circumstances Keith renounced the teachings of Quakerism and went over to the Established Church of England, in which he took orders. Still impelled by his fiery zeal, he, in 1702, returned to America as a missionary for the newly organized Society for the Propagation of the Gospel, the pioneer of a great effort to win America back to the historic church. He

<sup>1</sup> Whitehead, *Contributions to the Early History of Perth Amboy*, pp. 16-20; Proud, *History of Pennsylvania* (Philadelphia, 1797), vol. i, pp. 363-376; Gough, *History of the People Called Quakers* (Dublin, 1789), vol. ii, pp. 317-350; Sewel, *History of the Quakers* (New York, 1844), vol. ii, pp. 345, 404.

was accompanied by the Rev. John Talbot, a man destined for a most striking career.<sup>1</sup>

These bold missionaries preached and held service at numerous points in the Jerseys notably at Amboy, Elizabethtown, Shrewsbury, Woodbridge and Burlington, and they met with striking success especially among the "Keithian" Quakers, a considerable number of whom followed their leader into the Anglican communion. Among these converts were John Barclay, brother of the great Quaker apologist, Miles Forster<sup>2</sup> and John Reid the surveyor general.<sup>3</sup> The mission was supported and encouraged by Lord Cornbury, who paraded great zeal for the church.

The greatest single achievement of Keith and Talbot was at Burlington, where a considerable congregation was soon gathered, by which land was purchased and a church erected in 1703.<sup>4</sup> This church, the famous St. Mary's, became a veritable bulwark of Anglicanism in West Jersey. Lord Cornbury and many of those about him were present at the first sermon preached in it by Talbot.<sup>5</sup> Its first wardens were Nathaniel Westland and Robert Wheeler, while among other well-known persons connected with its earliest years were John Jewell, William Budd, Abraham Hewling and Hugh Huddy.<sup>6</sup> Budd was a notable convert from Quakerism.<sup>7</sup> Of St. Mary's parish Talbot became the first rector.<sup>8</sup> Shortly after the

<sup>1</sup> Whitehead, *op. cit.*, pp. 20-21; Hills, *Hist. of the Church in Burlington*, p. 21.

<sup>2</sup> Whitehead, *op. cit.*, p. 211 (note 5).

<sup>3</sup> *Ibid.*, p. 212 (note 6).

<sup>4</sup> Hills, *op. cit.*, pp. 22, 30, 31, 32, 35.

<sup>5</sup> *Ibid.*, pp. 39, 40.

<sup>6</sup> *Ibid.*, pp. 45, 53.

establishment of the church, however, he returned to England on business connected with his mission and was succeeded at St. Mary's by the Rev. Thorowgood Moore who had been a missionary at Albany and among the Indians.<sup>1</sup>

Through the efforts of Keith and Talbot another congregation was formed at Hopewell. But this parish had as yet no clergyman of its own.

In East Jersey the results of the mission were even greater. The interest aroused at Amboy by Keith and Talbot brought about the refitting of the old church.<sup>2</sup> At Elizabethtown a permanent foothold was gained by Anglicanism, and in 1706 St. John's Church was erected there.<sup>3</sup> Such progress was made that in 1704 Rev. John Brooke was sent by the Society as missionary to Elizabethtown, and by Cornbury's orders he officiated sometimes at Amboy.<sup>4</sup> Among the notable men connected with St. Peter's at Amboy were Gordon, Barclay, Willocks, Johnstone, and Sonmans.<sup>5</sup> But the most active lay churchmen at Elizabethtown was Colonel Richard Townley of Cornbury's council.

Brooke worked courageously amidst the many discouragements of a missionary. He held service at seven different places, covering ground fifty miles in extent. Besides Elizabethtown and Amboy, he visited regularly Rahway, Cheesquaks, Piscataway, Rocky Hill, and even Freehold.<sup>6</sup> Of Moore and Brooke Mr. Talbot says "the most pious and industrious missionaries that ever

<sup>1</sup> Hills, *op. cit.*, p. 64.

<sup>2</sup> Whitehead, *Contributions to the Early History of Perth Amboy*,  
p. 211.



the honorable society sent over.”<sup>1</sup> Mention should also be made of the work of Rev. Alexander Inness, who had officiated in the Jerseys apparently even before the coming of Keith and Talbot. He seems to have remained as missionary in Monmouth, where the church was much aided by the influence of Lewis Morris.<sup>2</sup>

The Anglican invasion of the Jerseys was, however, not accomplished without stirring up much feeling. Here, as elsewhere, the Friends opposed with great earnestness the efforts of Keith to proselyte. Such influence as the governor had was of course thrown in favor of the Anglicans, and Cornbury and his council from the beginning made every effort to have Quakers excluded from all official posts.<sup>3</sup> The real, though concealed, persecution directed against the Friends under the militia act of 1704 has been elsewhere described.<sup>4</sup> The advantage to be gained by the creatures surrounding Cornbury, though posing as the especial adherents of the Church of England, was too manifest to be neglected by such unscrupulous politicians.

But the alliance between the governor's clique and the church was not unbroken. The Anglicans in the proprietary party of course refused to coöperate with Cornbury in his attacks upon the Friends, while the fiery Morris did not hesitate to write to Secretary Popple that Cornbury himself by his scandalous life and unjust administration was the greatest obstacle to the success of the church.<sup>5</sup> Neither Moore nor Brooke approved of Cornbury's actions, and the former publicly denounced

<sup>1</sup> Hills, *op. cit.*, p. 83.

<sup>2</sup> Ellis, *History of Monmouth County*.

<sup>3</sup> *New Jersey Archives*, vol. iii, pp. 3, 66, 82, etc.

the conduct of the governor and held that he should be excommunicated. He also refused on one occasion to administer the sacrament to Ingoldsby.<sup>1</sup> Moore was, therefore, summoned to New York to answer, but he refused to obey on the ground that Cornbury, when in New York, had no power over New Jersey.<sup>2</sup> Ingoldsby, then resident at Burlington, thereupon suspended him from preaching, but Moore would not recognize his authority.<sup>3</sup> Cornbury ordered the sheriff of Burlington to arrest Moore and bring him to Amboy and, when after an interview, Moore would not humble himself, he caused him to be removed forcibly to New York and imprisoned in the fort.<sup>4</sup> Here he remained about three weeks, but when Cornbury left the city for Albany, Moore took advantage of the lax discipline to escape.<sup>5</sup> He was now joined by Brooke, who was also not well regarded by Cornbury because of his known agreement with Moore. Together Moore and Brooke reached Boston and sailed for England. But the incident was ended by the loss of the vessel with all on board.

Mr. Talbot had meanwhile returned and resumed charge at Burlington. Brooke was replaced at Elizabethtown in 1709 by the Rev. Edward Vaughan, a clergyman of ability and high character, who thus began a career of long service.<sup>6</sup> At first his district included the same territory as under Brooke, but in 1711 Rev. Thomas Halliday was sent by the Society to take charge of Am-

<sup>1</sup> Hills, *op. cit.*, p. 79.

<sup>2</sup> *New Jersey Archives*, vol. iii, p. 270; Hills, *op. cit.*, p. 67.

<sup>3</sup> *Ibid.*, p. 68.

<sup>4</sup> *Ibid.*, pp. 66-74.

boy and Piscataway.<sup>1</sup> These, with Mr. Inness of Monmouth, made up the Episcopal clergy of the colony.

From the time when the Anglican Church began to gather strength under the energetic efforts of Keith and Talbot, the leaders of the movement saw the desirability of obtaining a bishop. But this proved a matter of the gravest difficulty. Mr. Talbot was especially energetic in the project, and in 1705 a meeting of the clergy of New York, the Jerseys and Pennsylvania had been held in Burlington, which addressed the Society for the Propagation of the Gospel upon the necessity of the presence of "a Suffragan Bishop."<sup>2</sup> They also prepared a petition to the queen, which they sent to the Bishop of London, requesting that he determine whether it was convenient to present it.<sup>3</sup> One of the chief objects of Mr. Talbot's return to England seems to have been to make direct representation to the Society of the need of a bishop, though he also sought all further assistance for the mission work obtainable.<sup>4</sup>

As a result the Society itself, after due consideration, submitted to the queen in 1709 a memorial expressing the need of the American church for a bishop. At almost the same time the Society, regarding Burlington as a central point highly suitable for the residence of a bishop, purchased, through Governor Hunter, a large house at Burlington for that purpose. In so doing they acted upon the recommendation of Talbot.<sup>5</sup> The house itself was the "palace" of John Tatham, so often mentioned with admiration by contemporary authors.<sup>6</sup> The price paid was £600 sterling. But though the residence

<sup>1</sup> Whitehead, *op. cit.*, p. 46.

<sup>2</sup> Hills, *op. cit.*, p. 61.

<sup>3</sup> *Ibid.*, p. 63.

<sup>4</sup> *Ibid.*, p. 65.

<sup>5</sup> *Ibid.*, pp. 90, 100, 106, 107.

<sup>6</sup> Gabriel Thomas, *An Historical Description of the Province and Country of West New Jersey* (London, 1698), p. 17.

was procured, a bishop was not sent, in spite of further petitions and remonstrances from the American churches.' In 1713 the Society presented another memorial to the queen, which was so favorably received that immediate success seemed assured. But the death of Anne once more defeated the project for the time being.

Meanwhile, in spite of the devotion of Talbot, evil days had fallen upon St. Mary's. This result was due to the unfortunate prominence in the affairs of the church assumed by certain members of that political ring which had surrounded Lord Cornbury, and which had gained a new lease of life under Ingoldsby. Prominent among the congregation in 1709 were Ingoldsby himself, Colonel Coxe, Hugh Huddy, Jeremiah Basse, Alexander Griffith, Thomas Revell, and Daniel Leeds. The political influence of this clique undoubtedly brought some benefits, notably a charter of incorporation from Queen Anne.\* It must be admitted, also, that in spite of his bad public record, Basse at least was a faithful and efficient churchman. But the church was nevertheless drawn, in spite of itself, into the current of politics, and Talbot, with all his zeal, was unable or unwilling to resist the steps taken by his influential parishioners.

When Hunter assumed the administration, a clash followed, for although his excellency was himself a sincere churchman, he was a thorough Whig, a low churchman, and not a believer in measures of coercion for dissenters. As we have already seen, he soon identified himself with the proprietary party, to which the Quaker element in West Jersey belonged, and thus came into violent oppo-

In February, 1711-12, Hunter wrote to the Secretary of State that a violent contention had resulted at St. Mary's because Mr. Jacob Henderson, who was conducting services during a short absence of Mr. Talbot, had omitted in the litany the prayer for victory over His Majesty's enemies, and the prayer appointed to be said in time of war. To this the congregation objected, but Mr. Henderson would only say that he did so in accordance with the custom of Mr. Talbot. The "chiefe" of the congregation, however, replied that, being acquainted with Talbot's exemplary life, they were willing to bear with his scruples, but he could pretend none, having formerly never omitted the prayers.<sup>1</sup> To prevent further trouble, Hunter, through Colonel Quarry, induced Talbot to return.

But increased difficulties soon came. The wise and statesman-like policy of Hunter, in causing the removal from the council of Pinhorne, Sonmans, Coxe, Huddy and Hall and replacing them by persons in the proprietary interests, was regarded by the high churchmen as being a direct attack upon Anglicanism. In 1712 the violent Henderson, now missionary to Dover Hundred in Pennsylvania, drew up a "Representation of the State of the Church of England in New York and New Jersey" which was evidently intended as a protest to the Lords of Trade.<sup>2</sup> Henderson declared that in New Jersey no laws were made in favor of the church by reason of the fact that the majority of the assembly was composed of Quakers and other dissenters. There were but four ministers of the Church of England in the province.

council were churchmen. Now, however, Hunter had joined with Morris to remove from the council worthy gentlemen who had supported the church. Morris was indeed, though a professed Christian, a person of no principles, "who calls the service of the Church of England Pageantry." Owing to the encouragement they had received, the dissenters had actually taken possession of the church at Hopewell, which was built by subscriptions of Church of England men. Henderson ended his remarkable document by describing the characters of those who were about to be removed from the council and of those recommended. The former were represented as zealous churchmen, while the latter were absurdly vilified. John Anderson was "a Scotch Presbyterian who commanded a ship to Darien in the Scottish Expedition thither, and on his return in at Amboy, New Jersey, and lett his ship rot and plundered her and with ye plunder brought land." John Harrison was declared to have been "brought up with one Kid a pirate." Thomas Reading was "a man of no principles and who joyns with the Quakers in all their measures."

Henderson, however, certainly succeeded in causing Hunter annoyance. Though his representation was ably refuted in a statement probably written by Lewis Morris,<sup>1</sup> the home authorities deemed it wise to consult the bishop of London as to the character of the councilors recommended by Morris and Hunter.<sup>2</sup> To justify the governor, a meeting of the clergy of New York and New

<sup>1</sup> *New Jersey Archives*, vol. iv, p. 161.

<sup>2</sup> *New Jersey Archives*, vol. iv, p. 168. The bishop approved Hunter's recommendations. Upon receipt of Hunter's letter complaining of Henderson, however, the Lords again wrote to the Bishop requesting that he see to it that none but persons of proper character and principles be sent as missionaries in the future; *Ibid.*, vol. iv, p. 212.

Jersey, including Inness, Vaughan and Halliday, drew up a letter to Henderson expressing disapproval of what he had done.<sup>1</sup> On his part, Thomas Gordon, one of those attacked by Henderson, wrote to the governor with the request that he transmit to the Lords of Trade enclosed certificates of character signed by Inness, Vaughan, Mr. McKenzie of Staten Island and other clergymen, clearing both himself and Colonel Anderson from the slanders against them.<sup>2</sup> Hunter's recommendations were eventually approved by the Lords of Trade, though only after a lengthy delay.

But the contest was only beginning. Mr. Halliday, of Perth Amboy, soon became embroiled on the side of the militant churchmen, especially as the partisan of the worthy Peter Sommans.<sup>4</sup> Though his congregation, which included the most influential of the Perth Amboy proprietors, was bitterly opposed to his conduct, he was treated with respect until he selected Sonmans as his warden and denounced George Willocks openly from the desk for a presumed misappropriation of funds raised for the erection of a church. Thus aroused, the congregation shut Halliday out of the church, and so his career at Amboy ended ingloriously. He continued for some time further at Piscataway, but finally removed to New York, where he caused more annoyance.<sup>3</sup>

But Hunter's chief difficulty was of course with Talbot, who appears to have sympathized more and more with the opposition until he became the fiery ally of Colonel Coxe. The high-church party, which had struggled so

<sup>1</sup> *New Jersey Archives*, vol. iv, p. 173.

<sup>2</sup> *Ibid.*, vol. iv, p. 176.

<sup>3</sup> *Ibid.*, vol. v, p. 103.

<sup>4</sup> Whitehead, *Contributions to the Early History of Perth Amboy*, p. 217.

long against Quakerism, of course bitterly resented the leniency of the governor toward their enemies, and when the assembly under his influence passed the act qualifying Quakers to serve on juries their anger blazed up. In March, 1714, the wardens and vestry of St. Mary's addressed a remonstrance and petition to the Society, asking it to make every effort to secure the disallowance of the act.<sup>1</sup> Soon after an address was sent to the queen herself by Talbot with the wardens and vestry.<sup>2</sup> This represented how the church of the province was distressed by "the wiles of Quakerism and Scism," and especially by the passage of the act allowing Quakers to hold all posts of trust. The queen was besought to protect the church by disallowing the act as contrary to the laws of England. Communications were also sent to General Nicholson, of Virginia, asking for his assistance, and in one of these it was skilfully suggested that the sending of a bishop was the only sure way of protecting and guarding the church.<sup>3</sup> So great, indeed, were Mr. Talbot's efforts that he fell sick, and in his discouragement requested the Society for permission to return to England. He "had been long enough in those parts to see iniquity established by law, and that by some of your own members,<sup>4</sup> and what good can your missionaries do?"<sup>5</sup>

This agitation in St. Mary's was undoubtedly closely connected with the struggle in the courts over the qualifying of Quakers as jurors. It will be remembered that Basse, the clerk of the Supreme Court, refused to



attest Peter Fretwell and other Friends and was in consequence removed from his office.

Hunter was now moved to anger and in 1715 wrote to Secretary Popple, "that noisy fool Coxe has betrayed the public service so avowedly that I verily believe he had orders from home to do so. Mr. Talbot has incorporated the Jacobites in the Jerseys under the name of a church in order to sanctify his sedition and insolence to the government."<sup>1</sup> As a result of this outburst by the governor Talbot himself was given a copy of the charge, that he might have an opportunity to answer.<sup>2</sup> Basse wrote to the secretary of the Society declaring vigorously that the charge of Jacobitism was false, while Talbot's letter to the Bishop of London stated that he had been a "Williamite" from the beginning.<sup>3</sup> Talbot also sent a denial to the Society in which he spoke in an affecting way of the evils suffered by Basse and Griffith for their devotion to the church.<sup>4</sup> A fourth denial was prepared by the church wardens and the vestry, in which they quoted from the Bible "there are no such things done as thou sayest, but thou feignest them out of thine own heart."<sup>5</sup>

These denials, however, had no effect upon Hunter. He was much annoyed by the conduct of the Bishop of London in naming Mr. Vesey of Trinity Church, New York, as Commissary, and he declared to Secretary Popple that Vesey and Talbot had entered into a "con-  
trivance" with Governor Nicholson to ruin him. He reasserted that they were all Jacobites, declaring that "Talbot is a profest Jacobite; nay he will not dissemble

it.”<sup>1</sup> The governor was convinced that the efforts of Coxe to master the province against him owed much of their strength to the “furious Zeall” of Talbot. Together they “Enflamed the lower Rank of People to that degree that only time and patience or stronger measures than at present in my power can allay the heat.”<sup>2</sup>

But zealously as Talbot agitated, he shared in the downfall of Col. Coxe which followed his expulsion from the seventh assembly. At a meeting of the governor’s council, held on May 21, 1716, at Perth Amboy, Talbot’s case was considered. It was declared that he had encouraged a spirit of division in the province, that he omitted prayers from the liturgy, especially the prayer for victory over the Sovereign’s enemy,” and that he had incited the recent contempts of the courts. It was therefore ordered that the sheriff of Burlington administer the oath of allegiance to Talbot and that, if he refused the said oath, he be suspended from preaching and kept in custody until he should enter into recognition to be of good behavior.<sup>3</sup>

Whether this decision was enforced does not appear, but it is certain that the opposition of Talbot to Hunter was silenced. In 1717 a reconciliation between them was accomplished, however, by the efforts of their mutual friend George Willocks, himself an avowed Jacobite.<sup>4</sup> An effort appears to have been made by the governor and Willocks to have Talbot reveal “the wicked design of Coxe” and his confederates. But Talbot was unwilling

declared upon oath that Talbot had informed him that at the time of Coxe's election his party wished to pull down the Quakers' meeting-house and their dwellings, but he (Talbot) had dissuaded them. At another time it was suggested that all the Quakers' "glass windows" be broken. And, lastly, there was said to be an agreement among Talbot's followers that, if he were imprisoned, they would pull down the jail bit by bit. But Talbot had said that he would prevent this riot by leaving the province.<sup>1</sup>

In spite of the troubles resulting from the interference of Talbot in politics, the Church had continued to make progress in both Jerseys. Upon the expulsion of Mr. Halliday, Mr. Vaughan had again assumed charge of the entire district originally covered by Mr. Brooke. In 1711 a congregation at Woodbridge had been formed as a result of a split from the Presbyterian church there, and this also fell within his charge.<sup>2</sup> In 1714 Mr. Vaughan removed from Elizabethtown to Amboy for the benefit of his health, though he still continued to officiate occasionally at the former place.<sup>3</sup> But the congregation at Amboy had now grown to need a separate clergyman, and when Mr. Vaughan was sent back to Elizabethtown by the Society, Rev. William Skinner was named as missionary to the East Jersey capital.<sup>4</sup> Skinner arrived in 1722. The new clergyman officiated every third Sunday at Piscataway and occasionally visited Woodbridge in the afternoon. In 1726 he began officiating regularly once

<sup>1</sup> *New Jersey Archives*, vol. iv, pp. 301-3.

<sup>2</sup> Whitehead, *Contributions to the Early History of Perth Amboy*, p. 389.

a month for the people of Monmouth.<sup>1</sup> Christ Church at Shrewsbury had prospered under the ministry of Inness and the protection of Colonel Morris. In 1708 it had been honored by the gift of a communion service from Queen Anne herself. But after the death of Inness, which occurred probably in 1713, Monmouth had no regular clergyman until 1733, when the Society at length sent the Rev. John Forbes.<sup>2</sup>

The continued labors of Vaughan at Elizabethtown also added materially to the strength of St. John's Church.<sup>3</sup> Nor does it appear that St. John's escaped entirely from playing a part in politics. It seems to have been a center of proprietary influence amidst the antagonistic population of Elizabethtown, and Mr. Vaughan himself figured in the celebrated test case of Vaughan *vs.* Woodruff, which brought temporary victory to the proprietors against the associates in the Nicolls patent.<sup>4</sup> The influence of Vaughan in favor of Hunter in East Jersey thus partially overset that of Talbot against him. Both Vaughan and Skinner continued to serve until the end of the Union Period.

In West Jersey the progress was similar, and this growth was not confined to St. Mary's. In 1723 Talbot was visiting Trenton, Hopewell and Amwell. In 1722 a church, known as St. John's, was organized at Salem.<sup>5</sup> It is probable indeed that meetings in private houses had been held prior to this time, as among the original settlers there were several Episcopalian families. The Rev. Mr. Holbrook was the first rector. Although the peo-

<sup>1</sup> Whitehead, *op. cit.*, p. 224.

<sup>2</sup> Ellis, *History of Monmouth County*.

<sup>3</sup> Hatfield, *History of Elizabeth*, pp. 355-362.

<sup>4</sup> *Ibid.*, p. 308.

<sup>5</sup> Shourds, *History and Genealogy of Fenwick's Colony*, p. 438.

ple were generally poor, they proved willing to contribute to the erection of a church building and much needed assistance was received from the churchmen of Philadelphia. During the year 1726-7 Holbrook reported fourteen communicants.<sup>1</sup>

Meanwhile the plan for procuring a bishop had not been laid aside, and in June, 1715, the Society presented a memorial to George I. This contained a plan for creating four American bishoprics, two for the islands and two for the mainland. The seats of the continental bishops were to be Burlington and Williamsburg. But the government took no action in the matter. In the same year Archbishop Tenison bequeathed £1000 to the Society toward the settlement of bishops in America. Until bishops were established, the income was to go as a pension to worthy missionaries, and in 1721 this pension was bestowed upon Mr. Talbot in recognition of his prolonged efforts.<sup>2</sup>

In 1720 Talbot made his second visit to England, where he remained about two years and a half.<sup>3</sup> During this visit it seems certain that he received episcopal consecration from the Scotch non-juring bishops, although the matter was for a time kept secret.<sup>4</sup> This fact lends great weight to the charges of Jacobitism formerly made by Hunter. Be this as it may, Talbot's appeals to the legitimate authorities for the establishment of a bishop in America ceased after his return.

Talbot was warmly welcomed by his loyal flock at St. Mary's, yet he found that much ground had been lost during his absence. The bishop's house on the point,

<sup>1</sup> Shourds, *et al.*, p. 420.

which had so long awaited the coming of "a head," was now almost in ruins. But it was soon put once more into a sort of repair by the efforts of Colonel Coxe and William Trent.'

But Talbot's long and useful career was about to come to an unfortunate close. Burnet had now succeeded Hunter as governor of the Jerseys, and the son of the great Bishop of Salisbury was, if possible, an even stauncher Whig and low churchman than the soldier of Blenheim. He was, moreover, especially interested in ecclesiastical affairs. Soon after his return to America. Mr. Talbot had to suffer from the violent attacks of one Rev. John Urmston. The latter was a clergyman whom, apparently for good reasons, Talbot had co-operated with divers of the clergy of Pennsylvania in driving out of Christ Church, Philadelphia. Urmston now loudly denounced the rector of St. Mary's as a Jacobite.' At any rate, in August, 1724, Governor Burnet wrote to the Bishop of London that he had no complaint against any of his clergy except Talbot, who never would take the oaths to the king and never prayed for him by name in the liturgy. The governor further declared that when he was in the Jerseys, Talbot avoided him by going to Philadelphia. Moreover, he "has had the folly to confess to some who have published it that he is a bishop."<sup>3</sup> At about the same time the old ally of Talbot, Jacob Henderson, wrote from Maryland to the Bishop of London, also declaring that Talbot was in episcopal orders, and that there was danger lest he and Dr. Walton

As a result, Talbot was discharged from the service of the Society for the Propagation of the Gospel. In July, 1725, he wrote to the Bishop of London denying the charges which he understood had been made that he had undertaken to exercise the jurisdiction over his brethren the missionaries. "This is very strange to me, for I know nothing about it, nor anybody else, in all the world."<sup>1</sup> Talbot was nevertheless required by Burnet to desist from preaching, and the church in Burlington was temporarily closed.<sup>2</sup> The faithful missionary was compelled to leave the province. His devoted flock naturally did not acquiesce quietly in his removal, nor did they lack powerful sympathizers.<sup>3</sup> In January, 1726, a memorial was sent to the Society by the wardens and prominent members of St. Mary's. It was signed also by the wardens, vestry, and members of Christ Church, Philadelphia, and by the wardens of the church at New Bristol. The memorial represented how great Talbot's services had been and how the churches were suffering for lack of clergy and other support.<sup>4</sup>

Talbot, however, was never restored to his position, and in November, 1727, died at Burlington. Whatever his political mistakes, the Episcopal Church of New Jersey owes him a permanent debt of gratitude.

When the Society removed Talbot, it named in his place Mr. Holbrook the missionary at Salem.<sup>5</sup> But so cool were the churchmen of St. Mary's toward the new comer, that Holbrook determined to remain at Salem.<sup>6</sup> Rev. Nathaniel Harwood, who had been sent to Salem therefore proceeded to Burlington and assumed charge.

But he was evidently not powerful enough to fill the place of Talbot, and in 1729 the church wardens wrote to Mr. Vesey of New York setting forth that the church had dwindled to almost nothing and that they would "take it extreme kind" if he would signify to Harwood that it "would be his best way to remove with all speed."<sup>1</sup> An address was also sent to the Society asking for the appointment of Rev. Robert Weyman, whose work in Philadelphia was well known.<sup>2</sup>

This request was granted, and Weyman began a successful, though rather quiet, rectorate, quiet at least as compared with the stormy times of Talbot. In 1734 Weyman was, however, so far aroused as to write to the secretary of the Society requesting that a letter be sent to his congregation asking them to make some provision for the support of the clergyman, since he, being a man of family, was unable to live merely upon the bounty of the Society as Talbot had done. The congregation "constantly and duly attend the worship of God, but do not care to do anything toward the support and maintenance of the ministry."<sup>3</sup>

Weyman died in 1737 and was succeeded by the Rev. Colin Campbell.<sup>4</sup>

About the only matter of importance in connection with the history of St. Mary's during this period was the project, already suggested by Talbot, of employing the long-unused bishop's palace as a college, whereof there was much need. After Talbot's death the plan was further urged upon the Society by Colonel Coxe, but no definite steps in the matter were taken.<sup>5</sup>

Among the prominent persons connected with St. Mary's toward the end of our period were Peter Bard,

<sup>1</sup> Hills, *op. cit.*, p. 242.

<sup>2</sup> *Ibid.*, p. 243.

<sup>3</sup> *Ibid.*, p. 251.

<sup>4</sup> *Ibid.*, pp. 253, 254.

<sup>5</sup> *Ibid.*, p. 239.



William Trent and John Allen. Its most active benefactors were, however, Col. Coxe and Basse, who thus helped to redeem the errors of their past careers.

In East Jersey the closing years of the Union Period were equally uneventful. By the successful efforts of Mr. Skinner the number of the communicants at Amboy was raised from 20 in 1722 to 53 in 1741.<sup>1</sup> Among the distinguished parishioners were Dr. Johnstone, R. L. Hooper, Col. John Hamilton, Fenwick Lyell and Michael Kearney. Mr. Vaughan of Elizabethtown was equally successful. In 1721 his audience had increased to 200, and he had more than 40 communicants. In 1731 he wrote that within the last two years he had baptized 556 children and 64 adults. In 1734 there were 70 communicants. In 1736 St. Peter's Church of Freehold received a separate charter.<sup>2</sup> And just at the close of the period Newark, the most strictly Calvinistic community of the province, saw the establishment of an Episcopal congregation. This was, curiously enough, owing to a split in the First Presbyterian Church due to the censuring of the influential Col. Josiah Ogden for saving his crop of wheat on Sunday.<sup>3</sup> In 1736 the Society for the Propagation of the Gospel was maintaining six ministers in New Jersey.

The Anglican Church had thus become a permanent institution in the province. But it was no longer regarded as an aggressive invader, threatening religious liberty and political freedom. That it had already made so good a showing among those trained to regard it with suspicion and hostility is highly remarkable.

<sup>1</sup> Whitehead, *Contributions to the Early History of Perth Amboy*, pp. 224-5.

## CHAPTER XXVII

### THE PROPRIETORSHIP UNDER ROYAL RULE

#### EAST JERSEY

To understand the history of the East Jersey proprietorship under royal rule it is necessary to keep constantly in mind the fact that it included conflicting elements and interests. The majority interest was certainly made up of those shareholders, chiefly of Scotch origin, who had removed to the province and whose center of operations was Perth Amboy, in general alliance with a portion of the English and Scotch proprietors at home, among whom the West Jersey Society was the most active force.<sup>1</sup> This majority interest was not, however, always entirely harmonious. Among the Perth Amboy group the powerful and masterful Dr. Johnstone and George Willocks, intent upon various land-jobbing transactions, were not infrequently in opposition to other proprietors;<sup>2</sup> while Lewis Morris, as has so often been indicated, was somewhat inclined to insist upon leading. As the American "agent" of the West Jersey Society, he did not always promote peace.

But opposed to the majority shareholders there was an influential and bitter faction calling themselves "the English proprietors" because of their wish to make the

between Englishmen and Scotchmen. The leader of "the English proprietors" was William Dockwra of London, whose unscrupulous character had been revealed in the proceedings brought against him by George Willocks.<sup>1</sup> In close alliance with Dockwra was Peter Sonmans, who claimed to have inherited the four and one-fourth proprietries held by his father Arent Sonmans,<sup>2</sup> the largest single interest among the proprietors. So intent were the "English proprietors" upon defeating their enemies that they had shown themselves during the closing years of the proprietary rule willing to support those elements in the population of the province which desired the complete overthrow of the proprietorship and its system of quit-rents. They had given encouragement to Basse and Capt. Andrew Bowne against Governor Hamilton,<sup>3</sup> and in that way contributed in no small degree to the wreck of the proprietary government.

The issue between these factions in the East Jersey proprietorship was closely connected with the somewhat similar conflict in West Jersey between the Quaker interest, in alliance with that of the West Jersey Society, and the interest of the Coxes and their supporters. The Coxes acted throughout as in league with Dockwra and Sonmans.<sup>4</sup>

There seems to be no doubt that the majority element in East Jersey, represented by Morris, whose journey to England for the purpose of arranging the surrender to the Crown has been mentioned, believed that by giving up its powers of government on the understanding that its rights to the soil should be protected it had won a distinct triumph. The difficult task of maintaining order and of enforcing the decisions of the courts was henceforth to be executed

<sup>1</sup> *New Jersey Archives*, vol. xiii, p. 102.

by royal officers, disobedience to whom would be treason. Under the protection of the Crown the pecuniary interests of the proprietors would be safe.

It was asserted afterwards by Morris and others of his interest that the surrender to the Crown was made upon certain definite conditions which were embodied in Cornbury's instructions.<sup>1</sup> The Lords of Trade, however, declared with authority that the surrender was absolute and not "made upon terms."<sup>2</sup> They admitted, nevertheless, that certain articles desired by the proprietors had been put into the instructions.<sup>3</sup> Morris certainly saw the instructions in England,<sup>4</sup> and there seems no reason to doubt that the surrender was perfected with the understanding that the articles relating to the proprietorship would be executed.<sup>5</sup>

Lord Cornbury's instructions ordered in the 36th article that, to quiet the inhabitants of the province, an act should be passed securing the soil to the proprietors and those who had purchased of them.<sup>6</sup> Their quit-rents were to be secured, as well as all other privileges originally granted by James of York except the right of government. All private lands properly held were to be confirmed under such conditions as would tend to their more speedy cultivation. But Cornbury was not to consent to any act taxing unprofitable land. The 37th article ordered that none but the proprietors should buy lands of the Indians,<sup>7</sup> while the 38th set forth that Cornbury should permit the surveyors of the proprietors to proceed in their duties.<sup>7</sup> He was also to allow and assist such agents as the proprietors should appoint to collect their quit-rents. But such agents were not

and give proper security, but must also take the oaths appointed by parliament to be taken instead of the oaths of allegiance and supremacy. The governor was likewise commanded to take care that all lands purchased should be cultivated.

These were the only articles of the instructions directly relating to the proprietorship, but Morris declared that the 15th, setting a high property qualification for members of the assembly,<sup>1</sup> and the 53d, giving Quakers the right to hold office, were also concessions to the proprietors.<sup>2</sup> The article relating to Quakers was, of course, of significance chiefly for West Jersey, but the 15th article was of much importance for the proprietors of the Eastern division. Its execution would mean, in all probability, that the members of the assembly would be themselves proprietors, as few persons besides these possessed the necessary one thousand acres. The requirement of ownership of one hundred acres for the suffrage would also exclude from voting many of the poorer element in Elizabethtown and elsewhere. Morris and his interest really intended that the government should be under the control of the proprietors just as before the surrender, but with the royal executive to enforce the laws which they should make.

For a brief time after the arrival of Cornbury the new arrangement worked as the proprietors had expected. Yet the proprietors from the beginning seem to have been aware of Cornbury's true character as a certain clique among them, represented by Dr. Johnstone, paid him a bribe of one hundred pounds of plate, "hoping that he would nicely observe his instructions." Later they gave him a second

of, and a dislike for, the Quakers,<sup>1</sup> but this matter concerned East Jersey only indirectly. The governor allowed Thomas Gordon, the high sheriff of East Jersey, to secure the election of the proprietary candidates for the first assembly by an "artifice";<sup>2</sup> nor did he undertake to interfere with the proprietary officers like the register, Gordon, or the surveyor-general, Reid, in the discharge of their duties. When John Barclay was commissioned as receiver-general of the proprietary quit-rents Cornbury even went so far in observing his instructions as to issue a proclamation in his favor, December 11, 1704.<sup>3</sup> He also approved an act passed by the first assembly in December, 1703, which forbade any one from purchasing land of the Indians without a license from the governor, such licenses to be issued only to those who had previously obtained a certificate from the proprietary register to the effect that they held proper title. All purchases previously made without lawful title were to be void unless a grant from the proprietors was obtained within six months.<sup>4</sup> This act remained unrepealed for the entire union period.

But the harmony between the governor and the proprietors did not last long. As has been previously indicated, the break seems to have resulted from the fact that the first assembly, being under proprietary control, would not give Cornbury a sufficiently extravagant amount for the support of himself and his subordinates.<sup>5</sup>

At the first session of the assembly that body prepared the important "Long Bill," the object of which was to assert the rights of the proprietors to the soil of the province.

<sup>1</sup> *New Jersey Archives*, vol. iii, p. 2.

<sup>2</sup> *Ibid.*, vol. iii, p. 276.

<sup>3</sup> *Liber AAA of Commissions*. p. 21.

The exact text of this measure is not now accessible, though what purports to be a synopsis of it is given by Cornbury in his letter to the Lords of January, 1703-4.<sup>1</sup> It is clear that the important sections relating to East Jersey were those declaring invalid all claims to land based upon the Nicolls grant and the Elizabethtown purchase, and that authorizing the proprietors and their agents to make distress upon inhabitants for the non-payment of quit-rents. Cornbury stated that such distress was to be made by the proprietary agents independently without any proper warrant or authorization from any officer of the government.<sup>2</sup> The passage of the "Long Bill" was, of course, opposed by the inhabitants of Elizabethtown and also, according to Cornbury, by a delegation from Woodbridge, which maintained that it would destroy their charter.<sup>3</sup>

The fate of the "Long Bill" was indeed a matter of the utmost moment for the colony. Its passage and enforcement would have prevented the agitation and controversy of all the following years. Yet it must not be forgotten that it represented an effort to settle by a legislative measure, and a strictly party measure at that, a question which could have been settled justly only by a judicial decision. As it was, however, Cornbury became disgusted with the assembly because of its economy in its offers of support, and prorogued it before the "Long Bill" could be carried.<sup>4</sup>

In writing to the Lords, Cornbury endeavored to explain the many defects of the Long Bill, to show the selfish objects of the proprietors and the injustice done to the people of Elizabethtown. His communication contained the following remarkable description of the origin of the Nicolls grant.<sup>5</sup>

<sup>1</sup> *New Jersey Archives*, vol. iii, p. 28 *et seq.*, p. 55 *et seq.*

"The case stands thus. The people of New York were refractory to Nichols, but he found the people of Elizabethtown ready to submit to him, by which means those of New York were brought to their duty. As a reward for their fidelity Nichols granted the people of Elizabethtown the lands they now hold." Such ignorance seems inexcusable even in Cornbury. But Robert Quarry, the surveyor-general of customs, also wrote to the Lords of Trade against the Long Bill and the general course of the proprietors.<sup>1</sup> Quarry's character was above reproach even by his opponents,<sup>2</sup> and he undoubtedly believed that the proprietors were engaged in a sort of conspiracy against the inhabitants of the province. The force of his views is much weakened, however, by his strange blindness as to the character of Cornbury.

Before Cornbury cast himself into the hands of the anti-proprietary party he gave the first assembly one more chance to "answer the ends of government." But the breach only became wider. At the second session of the assembly bills were again brought forward for confirming the proprietary estates.<sup>3</sup> The only concession made to the governor was the introduction of separate measures for East and for West Jersey, but the chief provisions of the former "Long Bill" were retained.<sup>4</sup> The assembly made only a small concession regarding support, and made it evident that it would grant such support only as a condition for the passage of the proprietary bills. Cornbury accordingly declared war against the proprietors and their interests by dissolving the assembly in anger.

The Lords of Trade, in reply to his letters reporting his

<sup>1</sup> *New Jersey Archives*, vol. iii, p. 17.

<sup>2</sup> *Ibid.*, vol. iv, p. 50.

<sup>3</sup> *Assembly Journal*, Sept. 6, 13, 28, 1704.

<sup>4</sup> *New Jersey Archives*, vol. iii, p. 66.



action, so far justified him as to say that in their opinion the proprietary bills in their present form were unfit to be passed.<sup>1</sup> It cannot, of course, be believed that they knew anything of the influences which had induced the governor to take up his position.

It was later very conclusively shown that an alliance had meanwhile been arranged between the governor and the popular party in East Jersey. Col. Quarry seems to say in one of his letters to the Lords that he himself had suggested to the anti-proprietary leaders the advantages to be gained by them in supporting the governor.<sup>2</sup> But such a man as Quarry could hardly have advised the course actually followed.<sup>3</sup> The fact seems undeniable that a fund, commonly called "the Blind Tax," was raised by the Bownes and Richard Salter, of Monmouth County, by means of subscriptions from persons in sympathy with the Nicolls claimants. Many inhabitants of Elizabethtown and other settlements gave comparatively small sums, and the whole proceeding was very badly concealed. Those subscribing do not in all cases appear to have known accurately for what purpose the money was to be applied, but it was clearly understood that in some way the assembly was to be dissolved and the system of quit-rents thereby overthrown. The desire to avoid further payment of quit-rent was certainly the leading motive. The sum raised was said to have been as high as £700 or £800,<sup>4</sup> and it went as a bribe to Cornbury and those near him.<sup>5</sup> Cornbury understood, also, that the anti-proprietary party would give him general support.

<sup>1</sup> *New Jersey Archives*, vol. iii, p. 99.

<sup>2</sup> *Ibid.*, vol. iii, p. 16.

<sup>3</sup> The objections offered by the West Jersey Society to Coxe as member of the governor's council suggest that he had a share in making

The result, as has been elsewhere shown, was that when, in spite of every effort by the government, the proprietary interest carried by a very close margin the elections for the second assembly, the executive power interfered, and by a most unjust and unwarranted interpretation of the instructions excluded three Quaker members from West Jersey.<sup>1</sup> The anti-proprietary was thus put for a brief time in control of the legislature of the province.

For the struggle which must now come the proprietors were, to say the least, very poorly prepared. Because of their numbers, their differences in nationality and character, and of their wide separation, it had always been difficult for them to take vigorous action. The complexity of their affairs was, moreover, always increasing through the continued subdivision of the original twenty-four interests by sale and inheritance. Down to the surrender of 1702, however, some degree of unity had been maintained through the existence of the council of proprietors. It is true that the authority of this body was denied by Dockwra and the "English Proprietors," yet its action had in general been effective. But apparently with the expectation that the institution of royal government would relieve them of their most difficult problem, the proprietors had disarmed themselves by practically abandoning their most effective weapon.

On Dec. 2, 1702, the council of proprietors had ordered that an addition of 2,500 acres to a proprietary be made to the second general dividend of land declared in 1698, and it was ordered that the surveyor-general should survey to each proprietor his share without further particular order.<sup>2</sup>

was dissolved, for a former regulation was now renewed that no surveys should be made to any whose title did not appear upon record with the register of the proprietors. The register by means of this record henceforth usually certified to the surveyor-general the share of each proprietor desiring lands.<sup>1</sup> The survey was then made and returned by the surveyor-general or his deputy as before, but it was, of course, impossible to issue patents any longer under the great seal of the province. The council of East Jersey, therefore decided that henceforth the return of the survey made and recorded in proper form should be a sufficient proof of title. This step was, indeed, merely adopting for East Jersey the method long in vogue in West Jersey.<sup>2</sup> Having thus surrendered the greater part of their office to the surveyor-general, the council of proprietors gave over meeting at any stated times.<sup>3</sup> Conferences of the leading proprietors were still held when their affairs specially required. These seem to have taken place during the meetings of the assembly when measures relative to the land system were under consideration, and in effect were no more than what we might now term caucuses of the members of the houses belonging to the proprietary interest.<sup>3</sup> As an effective central force in directing proprietary affairs, the council of proprietors of East Jersey disappears after the surrender.

In meeting the second assembly Cornbury recommended, as his instructions required, legislation confirming the privileges of the proprietors.<sup>4</sup> He repeated this recommendation to other houses. But these speeches deceived nobody. The second assembly not only passed no measure providing for the interests of the proprietors, but its act "for altering

the present constitution" regulating the election of representatives in the assembly struck at the root of the political influence of the proprietors by doing away with the requirement of ownership of 1,000 acres of land for members of the assembly and of 100 acres for the right of suffrage. All freeholders were declared qualified to vote and to serve in the assembly.<sup>1</sup> With such a democratic system it was a foregone conclusion that the popular party would rule. The militia act was especially designed to injure the Quakers of West Jersey, who made up the core of the proprietary interest there, while though the act for the laying out of highroads was apparently harmless enough, its execution, if we are to believe Lewis Morris, was given to commissioners who made every effort to injure their enemies by pulling down their enclosures and laying ways through their orchards. They even laid a road across a mill-pond to make a proprietor pull down his dam and mills, though he offered to build a bridge for them which would cut off three-fourths of a mile.<sup>2</sup> The acts of the second assembly were, it is true, all eventually disallowed by the Crown; but, as usual, the disallowance was not known in the province until they had been in force over a year.

The acceptance of these acts of the assembly was, however, of less concern for the proprietors than other proceedings of the governor. He, of course, immediately quarreled with the fiery Morris, who boldly asserted that Cornbury was violating the conditions upon which the province had been surrendered. In the meetings of the council during

the first session of the second assembly Morris for a time endeavored to defeat the purposes of the majority, but eventually he absented himself and refused to return to duty. Thereupon he was suspended from the council.<sup>1</sup> Cornbury had already recommended Coxe and Col. Townley for vacancies in the council. He now recommended Roger Mompesson,<sup>2</sup> and finally even Peter Sonmans.<sup>3</sup> All of these persons were opponents of the proprietors, and their appointment meant, of course, that the upper house would henceforth be in the hands of their bitter enemies. Coxe and Sonmans were especially dreaded because of their known animosities and ability.<sup>4</sup> As we have already seen, the home authorities did actually appoint Townley, Mompesson and Coxe in 1704, and Sonmans somewhat later. Morris, however, had too much influence, and Cornbury was ordered to restore him to his place upon his making proper submission.<sup>5</sup> But he would not resume his seat while Cornbury was in power.<sup>6</sup>

Meanwhile a keen struggle had been going on in England between Dockwra, Sonmans, and the Coxe interests on the one hand, and the West Jersey Society, with others interested in the Jerseys, on the other. Among the opponents of Dockwra, Thomas Lane, Robert Michell, E. Richier, and John Bridges of the Society were active, but the real leader was Paul Dominique, son of the commissioner of plantations,<sup>7</sup> and himself later a member of the board. Dockwra had recommended Sonmans for the council in room of Leonard, deceased, as the representative of the

<sup>1</sup> *New Jersey Archives*, vol. iii, pp. 73-77.    <sup>2</sup> *Ibid.*, vol. iii, p. 78.

"English Proprietors," who had made him their agent and general attorney.<sup>1</sup> But their opponents submitted objections to the Lords of Trade, urging that Sonmans was a bankrupt, that his claims in East Jersey were disputed, and that it was probable that his lands in any case belonged only to the Crown, since Arent Sonmans died an alien.<sup>2</sup> There was also a dispute over the qualifications of Coxe for the council. Dominique and his party alleged that Coxe really had no interest in the Jerseys since his father had been bought out by the West Jersey Society. They also accused him and Quarry of instigating "a faction of the poorer sort" in the province to subvert that part of the constitution relating to the qualifications of members of the assembly. Other charges were also brought.<sup>4</sup> Coxe easily showed that considerable interests had been reserved when Dr. Coxe sold to the West Jersey Society, but tried to justify his conduct in the political affairs of the province by citing the approval of Cornbury.<sup>5</sup>

When the action of the second assembly became known in England the contest was resumed upon different grounds. The West Jersey Society formally petitioned the Lords of Trade against Cornbury's conduct, asserting that he was violating the conditions of surrender embodied in his instructions.<sup>6</sup> Coxe, Dockwra and Sonmans, on their part, presented a memorial praying that Quakers be excluded from the council, assembly, and all places of trust in the colony. The triumvirate said that they were glad that the bill altering the constitution had not been passed by the

<sup>1</sup> *New Jersey Archives*, vol. iii, p. 40.

<sup>2</sup> *Ibid.*, vol. iii, p. 35.

<sup>3</sup> *Ibid.*, vol. iii, p. 37.

<sup>4</sup> *Ibid.*, vol. iii, p. 37.

<sup>5</sup> *Ibid.*, vol. iii, pp. 42-47. *West Jersey Records*, liber B, part i, pp. 289-298.

<sup>6</sup> *New Jersey Archives*, vol. iii, p. 81.

Crown. They prayed, however, that the freeholders in each county be permitted to elect whomsoever they saw fit, and begged leave to offer the draft of a proper bill.<sup>1</sup> The West Jersey Society retaliated by another lengthy memorial complaining of Cornbury and thoroughly exposing the infamous scheme by which he had gained control of the second assembly. They set forth also many of the other misdoings of the governor, and concluded by asking that Morris, their agent, be restored to the council.<sup>2</sup>

The result of this wordy war was indecisive, though rather favorable to Dominique and the Society. Coxe was named for the council with the other persons recommended by Cornbury,<sup>3</sup> and the Lords repudiated the theory of a conditional surrender by the proprietors. On the other hand, all the acts of the second assembly were disallowed, and a new instruction issued regarding the constitution of the assembly which restored a high property qualification both for membership in the assembly and for the suffrage.<sup>4</sup> Morris was ordered restored, and a letter was sent by the Lords to Cornbury in which, although he was approved for not passing the proprietors' "long bill" in its present form, he was told plainly not to meddle in the future with the results of elections.<sup>5</sup> The protests of the West Jersey Society had evidently contributed materially in shaking the confidence of the home authorities in his lordship.

But meanwhile an issue of even more immediate importance for the proprietorship had appeared in the colony itself. In 1704 Peter Sonmans arrived in the Jerseys with a commission from Dockwra and several other "English Propri-

<sup>1</sup> *New Jersey Archives*, vol. iii, p. 82.

<sup>2</sup> *Ibid.* vol. iii, p. 82.

<sup>3</sup> *Ibid.* vol. iii, p. 82.

etors" to act as their "agent."<sup>1</sup> He was authorized by this commission to appear in court for the proprietors, to sell proprietary lands at the highest price obtainable, to sign warrants of survey for the same, and upon the return of the surveys, in conjunction with certain persons named in his instructions, and also such of the proprietors residing in the province as should see fit, or any three of them, to grant patents for the land. He might also suspend the present surveyor-general, William Lawrence, and appoint a successor upon his death or removal. Sonmans was further to settle accounts with all quit-renters and to prosecute all such as refused to pay the proprietors their moneys. Any officer named by the proprietors, save Dockwra, might be suspended by him. The commission next declared the powers of the council of proprietors revoked and all surveys and transfers of land made by them void, as well as all other acts. The agent was also to take all proper legal action for recovering Staten Island, which rightfully belonged to the proprietors. He was to appoint rangers on the proprietary lands and attend to many other lesser matters. In return Sonmans was to receive £100 annually out of the quit-rents.

The commission of Sonmans conflicted directly with that of John Barclay as receiver-general of quit-rents.<sup>2</sup> The question between them was of course a legal one and hardly a matter for an executive decision. But Cornbury was in a position to take advantage of the conflict, and did not hesitate to do so. Although he seems to have given a hearing to the parties,<sup>3</sup> he promptly recognized the commission of Sonmans. and. on Nov. 6. 1705. issued a proclamation



receiver-general of quit-rents and ordering all sums due to proprietors to be paid to Sonmans.<sup>1</sup>

Though Barclay was obliged to submit for the time being, in 1707 he produced before Cornbury and council a second commission as receiver-general of quit-rents signed by ten proprietors residing at or near London, and superseding the authority of Sonmans. But the royal council, instead of qualifying him, ordered that his papers be taken from him, transmitted to England, and laid before the Queen.<sup>2</sup> Meanwhile in May, 1708, a bill in chancery had been filed against Barclay at the suit of Sonmans and upon his neglect to offer an answer, a writ of commission of rebellion was made out against him. Upon this he was arrested and imprisoned from June 3, 1708, until March 12, 1708-9. Finally Barclay succeeded in obtaining from the court further time to prepare an answer. He thus gained his liberty, though the contempt of court was not cleared.<sup>3</sup>

Cornbury had meanwhile ordered the surrender of the proprietary records in the hands of Gordon, the proprietary register, to Basse, the secretary of the province.<sup>4</sup> This order was served on Gordon at Shrewsbury, and he endeavored to avoid the issue by saying that as the records were at Amboy he could give no positive information till he came there. He was, however, arrested and put under heavy bail to answer before the governor and council. Gordon was much abused by the governor for his refusal

<sup>1</sup> *Liber AAA of Commissions*, p. 60.

<sup>2</sup> *New Jersey Archives*, vol. iii, pp. 331-3; vol. iv, p. 43.

<sup>3</sup> *Ibid.*, vol. iii, pp. 375, 421.

<sup>4</sup> *Ibid.*, vol. iii, pp. 141, 253-4. By what authority Cornbury acted is

to deliver the books, but resolutely declared that he could not do so until he had consulted with the proprietors. The proprietors, however, yielded to necessity, and Gordon finally surrendered the records.<sup>1</sup> The records were delivered by Basse to Sonmans. Both of these worthy persons took due care not to allow their opponents access to them. It was later declared by the assembly that Sonmans carried the records' out of the province.<sup>2</sup>

The position of Sonmans was eventually further strengthened by his appointment to Cornbury's council.<sup>3</sup> This had long been an object of Dockwra and "the English Proprietors,"<sup>4</sup> but the Lords of Trade were evidently a little suspicious. Being willing to gratify "the English Proprietors," however, they consulted Cornbury upon Sonmans' qualifications.<sup>5</sup> Cornbury replied that he was eminently suitable, being diligent in the interest of the proprietors and highly respectful to the government.<sup>6</sup> The appointment of Sonmans was surely a mistake on the part of the home authorities, second only to the naming of Cornbury and Ingoldsby.

The proprietors were still by no means routed. They were now compelled, however, to attack Cornbury through the assembly and by means of representations to the Lords of Trade. Supported by the provincial government, Sonmans was free to exercise his commission for the time being, and to dispose of the proprietary lands and rents as best suited his purposes. The details of Sonmans' administration will probably never now be known. He certainly col-

rendered an account of such moneys to the proprietors in the colony, and possibly not even to Dockwra. At a later time the revived council of proprietors made every effort to compel him to give a statement, but without success.<sup>1</sup> The "general agent" also disposed of proprietary lands rather recklessly. One important sale made under his authority was that of a tract of about 42,000 acres at Ramapo, in Bergen County, to Peter Fauconnier and a company of seven other well-known Huguenots, including Peter Bard and Elias Boudinot.<sup>2</sup> A second was the "New Britain" grant, a large tract lying in Essex County to the northwest of Elizabethtown. This sale was also made to a company including May Bickley, Nathaniel Bonnell, Richard Townley, William Nicholl and Peter Fauconnier. By the terms of the sale the only quit-rent required was that of a peppercorn annually, if demanded. Under Ingoldsby the shareholders in this New Britain grant succeeded in obtaining a confirmatory patent.<sup>3</sup> The efforts of the legitimate proprietors to recover possession of these tracts gave rise later to lengthy legal proceedings, and in the case of the Ramapo lands to much disorder and uncertainty among the settlers.

Meanwhile an attack upon Sonmans' influence came from a new quarter. His claims to the proprietries of his father, Arent Sonmans, had been disputed by his sisters and their husbands, and Joseph Ormston, the husband of Rachel Sonmans, was a merchant of some influence. In September, 1705, Joseph Ormston obtained from the Queen herself a royal letter directed to Cornbury in person.<sup>4</sup> This stated that, as Arent Sonmans had died an alien, his lands had reverted to the Crown. The Crown had therefore been

<sup>1</sup> *Minutes of the Council of Proprietors of East Jersey*, bk. A, p. 11.

<sup>2</sup> Roome, *Early Days and Early Surveys in East Jersey*, p. 31 et seq.

<sup>3</sup> *Liber AAA of Commissions*, p. 91.

<sup>4</sup> *Ibid.*, p. 71.

pleased to grant all its rights to Ormston and Rachel his wife, to be held in trust for all the children of Arent Sonmans, *viz.*: Peter, Rachel, and Johanna, wife of Joseph Wright. Cornbury was ordered to prepare and pass, under the great seal of the province, letters patent to this effect. This letter was brought to the province by John Ormston, brother of Joseph.<sup>1</sup> Whatever its legal validity, it was certainly direct and binding upon Cornbury himself, who always made great parade of his devotion to his royal cousin.

But the passing of such a patent would have gone a long way toward destroying Sonmans' influence and greatly increased the political embarrassment of the governor. Cornbury therefore put Ormston off upon various excuses,—the illness of his wife, the non-attendance of a sufficient number of the council, the necessity of giving a hearing to Peter Sonmans, and finally the danger of a French attack upon New York. Finally, Sonmans and Ormston were both heard at length before the council, but it was the unanimous decision of that body that no action should be taken until the further pleasure of the Queen was known.<sup>2</sup> Thus the attack upon Sonmans failed for the time, but another ground of complaint was added to those already existing against the governor and his clique.

The great contest between Cornbury and the third and fourth assemblies had meanwhile been raging. The brave and determined stand made by these bodies against the executive tyranny is highly creditable both to their leaders and to the province at large. At the same time it is true that those who took the lead in opposing Cornbury were proprietors fighting not only for the liberties of their fellow-colonists, but also to preserve their own pecuniary interests and the social and political influence of their corporation.

<sup>1</sup> *New Jersey Archives*, vol. iii, p. 161.

<sup>2</sup> *Ibid.*, vol. iii, pp. 161-3.

Morris, Jennings and Gordon were striving for other motives as well as patriotism.

In the remonstrance of 1707 the putting of the East Jersey records into the hands of Sonmans was set forth as one of the seven great grievances of the province.<sup>1</sup> In the reply of the assembly to Cornbury's answer,<sup>2</sup> further telling arguments were advanced against his attitude toward the proprietors. The assembly showed plainly that Cornbury had no legal power to judge as to the relative holdings of proprietors. That was a matter for judicial decision alone. Further, even if Sonmans' commission were admitted as valid, it gave him no authority to keep the records. Moreover, Sonmans was not a resident of the province, had given no security, and was declared to be of notorious character.

On the other hand, the animosity shown by Cornbury and his clique against Morris and Gordon had something more than a political motive. The continued efforts against Gordon because of his refusal to obey Cornbury in surrendering the records are elsewhere described.<sup>3</sup> Among other persons prosecuted before the corrupt tribunals several, like Barclay and George Willocks, were leading proprietors.<sup>4</sup>

The removal of Cornbury was, of course, in itself a great victory for the majority interest among the proprietors and may well have saved them from complete ruin. But the appointment of Lovelace and the preparation of his instructions were the occasion of a new struggle between the factions. This centered at first about the appointments to the council. Morris of course resumed his post as president,<sup>5</sup>

<sup>1</sup> *New Jersey Archives*, vol. iii, p. 156.

and the influence of William Penn secured the exclusion of Revell and Leeds of West Jersey, who were henchmen of Col. Coxe.<sup>1</sup> But the efforts of the West Jersey Society and of Joseph Ormston to secure the dismissal of Sonmans did not succeed.<sup>2</sup> During this conflict both factions among the proprietors in England made efforts to convince the Lords of Trade that they held the preponderating interest. According to the list of shareholders submitted by Ormston the persons who signed Sonmans' commission as "agent" held only four proprietries, while those residing in and about London who did not sign held eleven and three-fourths.<sup>3</sup> Dockwra, however, claimed for his faction ten and one-half, while those who did not sign had but eight and three-fourths.<sup>4</sup> The difference was due chiefly to the fact that Dockwra credited Peter Sonmans with four and one-fourth proprietries, while Ormston gave these to himself and to Joseph Wright. The name of William Penn, strangely enough, appears among those admitted to have signed.

The administration of Lovelace brought also an active revival of the conflict of the proprietary factions in the province, but it was too brief to permit a definite issue. The struggle is so closely connected with the conflict of political parties, which was partly its outgrowth, that it is difficult indeed to distinguish the two. Lovelace did not, like Hunter later, throw himself openly into the arms of either faction. As has already been indicated, however, he inclined to the proprietary side, which during his brief rule controlled the assembly. Not only was Fauconnier superseded as receiver-general by the proprietor, Miles Forster.

tice in room of his persecutor, Mompesson.<sup>1</sup> This appointment carried with it the suspension of all proceedings against Barclay and the other proprietors who were in the clutches of the courts, and led indirectly to the indictment of Basse and of Peter Sonmans for various high crimes.<sup>2</sup>

The bitter warfare of memorials and addresses carried on between the house and the lieutenant-governor and council during Lovelace's only assembly has been elsewhere described. It is important to notice that the house directed especial animosity against Sonmans, and in a lengthy memorial not only laid bare his arbitrary and unwarranted conduct in numerous legal proceedings, but declared that the tyrannical proceedings of Cornbury were partly due to his advice. His personal character, as usual, was not spared, and the house prayed for his dismissal from the council.<sup>3</sup> The lengthy address of defense prepared by the lieutenant-governor and council, on the other hand, skilfully paraded the misdoings of the proprietors.<sup>4</sup> It was pointed out that Gordon had begun the whole conflict by his improper conduct as sheriff when the first assembly was chosen. The acts of Gordon were said to be due to the influence of Morris, Johnstone, and Willocks, whose tool he was.<sup>5</sup> Much was made of the fact that Johnstone admitted having tried to bribe Cornbury,<sup>6</sup> and that George Willocks, represented as a leading spirit among the proprietors, was a "high-flown" Jacobite, who refused to take the oaths of allegiance and "upbraids other gentlemen—nay, even members of the council—with being damned for taking them."<sup>7</sup>

<sup>1</sup> *New Jersey Archives*, vol. iii, p. 500.

<sup>2</sup> *Minutes of the Supreme Court (1704-1715)*. May Term. 1709.

Moreover, the old decision in the case of Jones *vs.* Fullerton was recited to show the injustice of the claims of the proprietors to the Elizabethtown tract <sup>1</sup> and the wickedness of their efforts to persuade Cornbury to pass their "long bill." <sup>2</sup> The address contained also a bitter personal attack on Lewis Morris and many other allegations against the proprietors too lengthy to recite here.

The accession of Ingoldsby, however, lost for the proprietors whatever advantages they had gained under Lovelace. It meant, of course, the revival of the influence of Sonmans, Coxe, and Basse. Mompesson and Pinhorne were restored to their places at the head of the courts, and Sonmans and Basse were quickly acquitted by packed juries.<sup>3</sup> Morris was once more suspended from the council, while the unfortunate Barclay was by order of the council again prosecuted by the attorney-general upon information. He was charged upon very insufficient evidence with altering entries in the proprietary records.<sup>4</sup>

The great efforts made by Ingoldsby and his council to cast upon the Quakers the blame for the defeat of the measures in aid of the Nicholson-Vetch expedition <sup>5</sup> have their place also as events in the warfare between the proprietors and their opponents. But this matter chiefly concerned the proprietorship of West Jersey. Yet we must recall that in the fifth, or second assembly of Ingoldsby's time, there were further developments. Since the defeat of the "long bill" the proprietors had apparently made no further direct efforts to secure the confirmation of their claims by a legislative act. In the fifth assembly, however, a bill for settling the

<sup>1</sup> *New Jersey Archives*. vol. iii. p. 403.

<sup>2</sup> *Ibid.*. vol. iii. p. 404.



rights of the proprietors and purchasers was ordered prepared.<sup>1</sup> As the majority of the representatives were not strongly in the interest of the proprietors, we may question whether this order was made in good faith. The motive was doubtless to make it appear that Ingoldsby was endeavoring to carry out his instructions. Bills confirming the rights of the proprietors of the two divisions respectively were duly prepared and laid before the house.<sup>2</sup> But the East Jersey bill was referred to a committee with an anti-proprietary majority, although Gordon was chosen chairman. The committee thereupon proceeded to blot out and cancel all the bill except the title, detaining Gordon by force while it did so.<sup>3</sup> For this act Capt. Price, Lawrence, and Mott of the committee were forced to ask pardon at the bar of the house;<sup>4</sup> but the assembly at once voted not to bring in a new proprietary measure.<sup>5</sup> Under Ingoldsby the factional spirit evidently continued to run high, but there was after all little change in the situation.

Thus, up to the accession of Hunter, royal rule had brought little or no advantage to the proprietors of East Jersey, or, to speak more exactly, to the majority interest. The enforcement of their claims to the Elizabethtown tract was as far off as ever. The council of proprietors which had given some show of unity to their action before the surrender had been virtually dissolved. The executive management of their affairs was still in the hands of their enemy, Sonmans. The records upon which a great part of the land titles of East Jersey rested were still in his control. It seems certain that the payment of quit-rents had not been enforced in the greater part of the province, and such sums

as had been raised were in the hands of Sonmans. Moreover, many of the leading proprietors, as Morris, Gordon, Barclay and Willocks, had suffered humiliating personal hardships.

But it is important to notice that the leading part in the attack upon the proprietors has been taken by Sonmans, Dockwra and Coxe, who represented the minority element among the proprietors themselves. The old popular opposition in Elizabethtown and elsewhere still existed and had given general support to Sonmans and Coxe. But the alliance was one of convenience only. Mutual opposition to the Amboy clique was the only bond of union between the New England settlers and the ring of speculators and adventurers who had seized power, nor should the former be charged with all the misdoings of the latter. The Elizabethtown party were willing to take advantage of the situation to escape the hated quit-rent, but cared little for the other questions at issue. During this period it is indeed rather noticeable that the persons who were most active in the assembly and among the people in carrying on the warfare against the proprietors were not representatives of Elizabethtown, but of Monmouth—the Bownes, Richard Salter, the Lawrences, and Gershom Mott.

With the accession of the Scot, Robert Hunter, the situation changed. Hunter began his rule by an effort to compose misunderstandings and to secure harmony. In his first speech to the assembly he pointed out that successful government was impossible if disputes over property were made political issues. He called upon all to conduct themselves like good subjects, and to leave the decision of property disputes to the courts. But such a result was impos-

volved was too great. Moreover, it was well understood that there was no justice in the courts as then constituted. The first session of the sixth assembly was marked by the usual quarrel between Cornbury's ring in the council and the assembly, in which the council, in spite of Hunter's protest, threw out nearly all the measures sent up for their approval,<sup>1</sup> and the assembly presented their bitter addresses against Basse<sup>2</sup> and William Hall.<sup>3</sup> Sonmans was also attacked by the assembly, and an affidavit declaring that he had been guilty of conduct disparaging to the new governor was submitted by sundry inhabitants of East Jersey, among whom Willocks and Barclay were prominent.<sup>4</sup>

It has been elsewhere described how, under these circumstances, Hunter saw that he must identify himself with either one party or the other. He recognized clearly that the clique in the council was a corrupt ring acting for improper motives, while the proprietary party certainly represented the most respectable elements in the colony.<sup>5</sup> It must not be forgotten, either, that Hunter was himself a Scot, like Gordon, Johnstone, Willocks, and Barclay. Hunter therefore declared war upon Sonmans and Coxe. Practically all of Cornbury's officers, both civil and military, were dismissed. Jamison and Farmar succeeded Mompesson and Pinhorne as judges of the supreme court, while Hunter recommended, and after the usual unfortunate delay secured the dismissal of Coxe, Sonmans, Pinhorne, and Hall from the council. A proprietary majority thenceforth controlled the upper house in which, in addition to Morris, Gordon, John Anderson, Col. John Hamilton and Elisha Parker were prominent. The influence of the anti-proprietary party in

But, though Hunter had assumed office in 1710, it was not until the end of 1713 that the sweeping changes described had been carried through.<sup>1</sup> Meanwhile things had remained as under Ingoldsby.

The changes in the colony were, of course, accompanied by the usual struggle in England between the West Jersey Society and Dockwra. Dominique and Richier of course, when consulted by the Lords, supported the recommendations of Hunter.<sup>2</sup> Dockwra left no stone unturned in opposing the governor, trying especially to make it appear that Hunter was attacking the "South Britons" and churchmen in the province. In behalf of the threatened councilors, Dockwra submitted a lengthy letter from Coxe,<sup>3</sup> representing the conduct of Hunter in the worst light.<sup>4</sup>

Meanwhile Sonmans, who evidently felt the net tightening about him, fled from the province, carrying the land records with him. Warrants were issued against him,<sup>5</sup> but a trunk containing the records eventually fell into the hands of Basse, who was a surveyor of customs at Burlington. Basse declared that he thought the trunk contained smuggled goods, and so opened it, but some one had previously sent him the key, and Hunter believed that the whole matter had been previously arranged. At any rate Basse refused to surrender the records to any one.<sup>6</sup> Sonmans appears to have removed to Pennsylvania, but was wise enough not to make himself very conspicuous there.<sup>7</sup>

<sup>1</sup> *New Jersey Archives*, vol. xiii, p. 484.

<sup>2</sup> *Ibid.*, vol. iv, p. 140.

<sup>3</sup> No name is attached to the letter, but the writer speaks of Hugh Huddy as his lieutenant-colonel. *Ibid.*, vol. iv, p. 129.

<sup>4</sup> *Ibid.*, vol. iv, pp. 116, 118.

<sup>5</sup> *Ibid.*, vol. xiii, p. 559.

<sup>6</sup> *Ibid.*, vol. iv, p. 172. In March, 1713-14, the records were by order of the governor and council turned over to Thomas Gordon. *Ibid.*

Meanwhile Hunter's position was rendered insecure, first by the overthrow of the Whig ministry, and then by the death of Anne. Dr. Daniel Coxe, the original purchaser of West Jersey from Byllinge, and his son, Samuel Coxe, petitioned the Lords against a renewal of his commission,<sup>1</sup> and Dr. Coxe seconded their action by a letter to the Lords of Trade in which he accused Hunter of violating his instructions and of committing divers other illegal acts.<sup>2</sup> Hunter was evidently worried by this flank attack,<sup>3</sup> but he actually had little cause for anxiety, as his administration had given satisfaction, and he was immediately re-commissioned.<sup>4</sup> Meanwhile Col. Coxe and Basse had been carrying on an active campaign against Hunter in the province itself, and, as has been elsewhere shown, succeeded in getting control for a short time of the seventh assembly. The issue had, however, now become partly a personal one between Coxe and the governor, and partly a religious question between the churchmen and the Quakers. The supporters of Coxe were chiefly from West Jersey, while in the Eastern division only the representatives of Monmouth and of Bergen, where it appears that Sonmans had much influence, proved willing to oppose the governor directly.<sup>5</sup>

The expulsion of Coxe and his followers from the assembly definitely ended the conflict, and left Hunter and his supporters in control of the political situation.<sup>6</sup> Coxe, driven from the province, journeyed to England with the purpose of making direct representations to the home government,<sup>7</sup> while Basse eventually made his peace with

<sup>1</sup> *New Jersey Archives*, vol. iv, p. 198.

<sup>2</sup> *Ibid.*, vol. iv, p. 203.

<sup>3</sup> *Ibid.*, vol. iv, p. 210.

<sup>4</sup> *Ibid.*, vol. iv, p. 202.

<sup>5</sup> *Ibid.*, vol. iv, p. 210.

the party in power. Thus, at length, by May, 1716, all departments of the government were in the hands of the proprietary party.

✓ Upon the rout of the "general agent" a complete reorganization of the proprietary affairs which had fallen into such demoralization became necessary. But as usual it was so hard to secure unanimity that the required changes occupied a considerable time, and indeed were not completed until the next administration. In 1715, however, shortly after Hunter had received his commission from George I. James Smith appeared before the governor and council with his royal patent as secretary of the province, and also with a commission from the proprietors of both divisions of New Jersey as their register and recorder. At the same time James Alexander produced a commission as surveyor-general of both Jerseys. Smith and Alexander bore also a royal letter, approving them as recorder and surveyor respectively. Both gentlemen were then qualified by taking the oaths, and the council ordered a proclamation issued in their favor and prohibiting all other persons from exercising the offices in question.<sup>1</sup> In the next year Alexander received authority from Charles Dunster and Joseph Ormston, two prominent proprietors in England, to collect proprietary quit-rents and arrearages, which they believed would amount to about £500 per annum, country money.<sup>2</sup> He was evidently admitted as the authorized receiver-general of quit-rents.<sup>3</sup> Thus the question as to the proper qualification of proprietary officers was for the time definitely

advantage in connecting the recordership with the office of provincial secretary.

The excellent position of the proprietary affairs was further strengthened by the close friendship which soon sprang up between Governor Hunter and several of the leading proprietors. Among the governor's friends Morris<sup>1</sup> and Dr. Johnstone are notable.<sup>2</sup> James Alexander, also, whose connection with the proprietorship begins during this period, was in a sense Hunter's protégé.<sup>3</sup> Thomas Gordon was at first high in the confidence of the governor, and even the Jacobite, George Willocks, who seems to have been commonly regarded as a rather unscrupulous speculator, might be counted among Hunter's supporters.<sup>4</sup> But though Hunter's association with the proprietors was close, and though he was now virtually their political leader, there is no evidence to show that he was at any time influenced by any but proper motives in his attitude. Bitterly as Hunter was attacked by Coxe and his other opponents, they never appear to have charged him with corruption in any form.<sup>5</sup>

But the time had already gone by when the proprietors could assert their claims arbitrarily, either through the passage of a legislative measure like the lamented "Long Bill," or otherwise. Hunter had declared for a settlement of all questions of property through the courts, and even the proprietors must live up to the declaration. Yet with Jamison and Farmar presiding over the supreme court a decision in their favor was almost as certain as an unfavorable one would have been under Mompesson and Pinhorne. From

<sup>1</sup> The son of Lewis Morris was Robert Hunter Morris.

<sup>2</sup> *New Jersey Archives*, vol. v, p. 63.   <sup>3</sup> *Ibid.*, vol. iv, p. 399 (note).

<sup>4</sup> *New Jersey Archives*, vol. iv, p. 119.

<sup>5</sup> Burnet was not so fortunate. *Ibid.*, vol. v, p. 199.

the point of view of the proprietors the establishment of their claims over the Elizabethtown tract was the important issue of the hour, and everything did indeed seem to indicate a final settlement of the troublesome question of the Nicolls grant.

In the November term of the supreme court, in the first year of George I, the proprietors brought a test case against the Elizabethtown claimants.<sup>1</sup> This was an action brought on the demise of the Reverend Edward Vaughan, as assignee of James Emmott for recovery of three hundred acres granted by patent to Emmott, April 6, 1686, which tract Joseph Woodruff had acquired by the famous Clinker Lot survey. The cause was tried in the next year, and a special verdict found setting forth the title of the proprietors, the Indian purchase of Bailey and his associates, and the Nicolls grant. The former was on the part of the plaintiff, the latter two for the defendant. This issue was argued at length for several terms, and finally in May term of the fourth year of George I judgment was given for the plaintiff.<sup>2</sup>

The effect of the proprietary victory was similar to that of the defeat of Capt. James Carteret in 1670. With the strong hand of Hunter at the helm any riotous or rebellious outbreak was of course impossible, and the Elizabethtown people had to face the inevitable. They accordingly proceeded to buy up the proprietary rights to numerous tracts, lying in lands still held by the proprietors in common, and to have their lands appropriated to them under the proprietary agreements for apportioning dividends. Between 1717 and 1721 no less than forty-five such surveys to inhabitants

<sup>1</sup> *Elizabethtown Bill in Chancery*, p. 46; Hatfield, *History of Elizabeth*, p. 307.

<sup>2</sup> An appeal to the governor and council by Woodruff was fruitless.



of Elizabethtown were recorded. Several of these were made to descendants of the original associates, as Joseph Meeker, Nathaniel Whitehead, Benjamin Ogden, Robert Ogden, and Benjamin Bond. Several were made to John Harriman, the Clinker Lot surveyor, and it is asserted that he accepted a "deputation" from the surveyor-general, and himself performed many of the surveys.<sup>1</sup> But though the dispute over the Nicolls grant thus seemed to be settled, it is clear that the Elizabethtown claimants by no means abandoned their hopes of reopening the question in the future.

It was only natural that, under these conditions, there should be a considerable revival of proprietary activity, and accordingly we find that from about the time of Hunter's victory over Sonmans and Coxe the taking-up of dividends and parts of dividends by proprietors went on much more actively than before. For example, from 1716 to 1730 no less than thirty-five surveys were made to proprietors within the limits of the Elizabethtown tract.<sup>2</sup> The surveys made to the inhabitants during this period were mostly for small amounts, the largest being to Henry Norris for only two hundred acres. But several of the surveys to proprietors were for large amounts. Willocks, in 1716, secured 9,000 acres; William Penn, in 1717, 7,500 acres; James Logan and John Budd, in 1720, 8,990 acres; and the West Jersey Society the huge tract of 91,895 acres, only a part of which, however, lay within the disputed district. But these tracts were exceptionally large. The other proprietary surveys were mainly for amounts under 300 acres.

Under these conditions the proprietors were able to turn their serious attention to the two boundary disputes which had caused more or less trouble in the Jerseys ever since the

sale by Lord John Berkeley to Edward Byllinge. The first of these was regarding the line of division between East and West Jersey, and the other as to the northern boundary between New Jersey and New York. The grant of East Jersey made by James of York to Carteret in July, 1674, had conveyed all lands north of a line from Barnegat to a creek on the Delaware next below Rankokus-kill.<sup>1</sup> But by the quintipartite division of 1676 Carteret agreed with the proprietors of West Jersey upon a new line. This line was to be drawn from the most northerly point of the province to the most southerly point of the east side of Little Egg Harbor.<sup>2</sup> The northernmost point of the province was "ye Northernmost Brance of the said Bay or River of Delaware which is in fourtie one degrees and fourtie minutes of Lattitude."<sup>3</sup>

There had been no reason, however, for the actual running of the line between East and West Jersey until the former province passed into the hands of the twenty-four proprietors. But in 1683 Governor Gawen Lawrie of East Jersey was instructed to make all needful preparations toward the actual survey of the boundary.<sup>4</sup> At length, at a council held at Fort James, New York, in June, 1686, Governor Lawrie of East Jersey and Governor John Skene of West Jersey agreed with Dongan of New York that the lines of the three provinces should be run. As the first step, it was to be determined which was the northernmost branch of the Delaware, and, if any controversy arose, it was to be determined by the votes of two of the three surveyors

to the fact that there is no point on the Delaware River proper in  $41^{\circ} 40'$ , nor indeed very near it.<sup>1</sup>

In September, 1686, therefore, Robert Barclay and Edward Byllinge, as governors of the two Jerseys, entered into a formal agreement to submit the question of the boundary between their provinces to arbitration.<sup>2</sup> The arbitrators were to make as equal a division of New Jersey as they could, according to their best judgment and skill, and John Ried and William Emley were chosen to make the award. They, on Jan. 8, 1686-7, decided that the line between East and West Jersey should run from the north side of the inlet at Little Egg Harbor "on a straight line to Delaware river, northwest and fifty minutes more westerly according to natural position and not according to the magnet whose variation is nine degrees westward."<sup>3</sup> This line would pass within seven miles of the falls of the Delaware and strike that river far south of  $41^{\circ} 40'$ .<sup>4</sup> Therefore strong opposition seems to have been at once offered to the award by the "West Jersians," who regarded it as unfair to their division. George Keith, the surveyor-general of East Jersey, however, undertook to survey the line. He began at Egg Harbor and ran the line for about sixty miles till it struck the south branch of the Raritan near Three Bridges. But at this point Keith found himself within lands claimed under grant from East Jersey, and either for this or other reason did not persist.<sup>5</sup> Further controversy be-

<sup>1</sup> Whitehead states that Robinson and Wells located the point on the Delaware, though the northern boundary line was not run. *Proceedings of the New Jersey Historical Society*, vol. viii, p. 163.

<sup>2</sup> *New Jersey Archives*, vol. i, p. 519.

<sup>3</sup> *Ibid.*, vol. i, p. 523. This is often called the Greenland award because

tween the proprietors followed, and the "East Jersians" appear to have contemplated continuing Keith's line or suing for the face of the five hundred pounds bond given by the "West Jersians" to abide by the award.<sup>1</sup>

But finally, in 1688, Robert Barclay of East Jersey and Dr. Daniel Coxe who claimed full governmental authority over West Jersey made a new agreement for the division of the province.<sup>2</sup> Keith's line was to be adopted as far as surveyed. Then the line was to continue across the south branch of the Raritan in a northeasterly direction to the north branch, then up this to its north end, and thence eastward to the nearest point on the Passaic; thence down this to its junction with the Pequannac, and up this as long as it runs northerly or northwesterly to the bounds of the province, or until it reaches 41°, and then due east to "Hudson's River." In obtaining this agreement Coxe secured a great advantage. There were in the province 7,795 square miles. West Jersey received 5,403, while East Jersey had only 2,392.<sup>3</sup> The agreement was naturally confirmed by the council of proprietors of West Jersey,<sup>4</sup> but it was so greatly to the disadvantage of East Jersey that, much as Barclay was respected, the other proprietors of that section rejected it.

As a result the line had simply remained unsettled since that time and serious inconvenience had followed. Divers surveys on West Jersey rights were made to the east of Keith's line, while an even more troublesome conflict of claims occurred to the north and west on the Delaware.<sup>5</sup> With the rehabilitation of the East Jersey proprietorship under Hunter it was felt by all concerned that a definite

<sup>1</sup> *New Jersey Archives*, vol. i, p. 522; vol. ii, p. 24.

<sup>2</sup> *Ibid.*, vol. ii, p. 34.

<sup>3</sup> Voorhees *op. cit.*, p. 14.

<sup>4</sup> *Minutes of the Council of Proprietors of West Jersey*, bk. i, p. 15.

<sup>5</sup> *New Jersey Archives*, vol. iv, pp. 377, 380.

settlement was necessary, especially when a prominent part in East Jersey councils was being taken by those energetic land speculators, Willocks and Johnstone. Accordingly the "West Jersians" opened negotiations with the proprietors of East Jersey through James Logan, the well-known "agent" of William Penn, who was now taking an active interest in the Jerseys. In a letter to George Willocks of December, 1718, Logan, while insisting upon the interpretation put by the West Jersey proprietorship upon the terms of the agreement of Coxe and Barclay, nevertheless admitted that the two governors had acted absurdly in endeavoring to alter so arbitrarily the original contract between Carteret and the Friends. Logan urged the necessity of an arrangement which would give justice to those who had purchased from either division in good faith.<sup>1</sup>

The result of the negotiations between the proprietors of the two divisions was, that after active work on both sides,<sup>2</sup> Hunter's last assembly was induced to pass an "Act for Running and Ascertaining the Line of Partition or Division between the Eastern and Western Divisions of New Jersey and for Preventing Disputes for the Future Concerning the Same, etc."<sup>3</sup> According to the arrangement therein provided for, the agreement between Coxe and Barclay was to be entirely set aside and a return to be made to the "Indenture Quintipartite," wherein the line of division was intended to run from the most northerly point of the northernmost branch of the Delaware River<sup>4</sup> to the most

<sup>1</sup> *Ibid.*, vol. iv, p. 377. For further evidence of the fairness of Logan see *ibid.*, vol. iv, p. 390.

<sup>2</sup> In November, 1718, the West Jersey council declared that the Barclay-Coxe line was the true one and that the attempt by East Jersey to alter it would lead to confusion and injury.

southerly point of the east side of Little Egg Harbor. This original line was to be run "straight and direct." A computation was then to be made of all lands taken up by the Eastern proprietors to the westward of the line and east of Keith's line of 1687. All such lands were to be confirmed to the persons holding them. A survey and computation was also to be made of lands taken up by the Western proprietors eastward of the line. If the two quantities balanced, possession was to be free, but in case one overbalanced the other, the difference was to be made up out of lands taken up and surveyed for the proprietors of the division which held the excess. But no lands already improved were to be taken as such equivalent. Lands taken as equivalent were to be held as belonging to the division by the proprietors of which they were held. It was also declared that, until it was determined of what amount the discount should consist, no land should be surveyed or taken up in either division except tracts of not above one hundred acres belonging to actual inhabitants and settlements.

A very important portion of the act then followed, which related not to the boundary line but to the more proper keeping of all proprietary records within the respective divisions. It was enacted that the respective surveyors-general should henceforth keep duly established offices at Amboy and Burlington, wherein should be carefully kept the surveys of all lands thereafter made. These were to be held good evidence of title and might be pleaded in suits at law. The surveyors-general were also authorized to sue for and to recover all moneys, draughts, books of surveys, etc.

of use for proving the rights of the proprietors and those claiming under them. These were to be safely kept within the respective offices. But such as were private property were to be returned to their owners when authenticated copies had been made. For the proper delivering of all such records to their successors the said surveyors were to give £1000 security to Governor Hunter. To prevent difficulties which had previously arisen from persons having surveys made and not recorded, it was ordered that all surveys, the certificates of which were in the hands of inhabitants of the Jerseys or of neighboring provinces, and which were not recorded within two years, should be void. If the certificates were held beyond sea, they must be recorded within three years.

For the execution of this act, as well as for that of the act for running the line between New Jersey and New York, the proprietors were to raise such sums as were necessary, since the assembly had refused to saddle the charges upon the province.<sup>1</sup> Commissioners and managers for the running of the lines were appointed; for the eastern division John Hamilton, David Lyell, George Willocks, and John Harrison; and for the western, Isaac Sharp, James Logan, Thomas Lambert, and John Reading. These persons were after due consultation with the proprietors, to collect and receive the sums necessary, but the sums were not to exceed £650 for East Jersey and £500 for West Jersey. The commissioners were, moreover, given power to act in the courts, to sell and convey lands, and to do all that should be necessary for the execution of their duties. But, if it was found necessary to sell lands for the purpose of raising funds, the managers of the eastern division were to sell no more than four thousand acres,

<sup>1</sup> *Assembly Journal*, Jan. 23, 1718-19.

and that in one tract out of the unappropriated lands. The managers were further empowered, by the consent of the major part of their proprietors or their agents, to appoint the surveyor-general and such other persons as were necessary to run the lines and to make the surveys.

The managers were to have as emolument ten per cent of all sums raised. If any of the managers died or refused to serve, the governor for East Jersey and the council of proprietors for West Jersey were to name successors.

Though the act of 1719 failed in the attainment of its immediate objects, it brought important results. Henceforth the surveyor-general's offices were more regularly maintained, and the surveys entered in separate books in a systematic manner instead of being recorded almost at random amid other proprietary records. The chances of disputes and uncertainties over land titles were thus greatly decreased. It is certainly a fair inference to attribute the carrying out of the new system, if not indeed its origin, to the surveyor-general, James Alexander, whose ability is fully demonstrated by an abundance of other evidence.<sup>1</sup>

But, in spite of the act, the question of the division line was not yet settled. The commissioners named in the act met after a short interval at "Trentham," and agreed to run the line as soon as possible.<sup>2</sup> The proprietors of the eastern division were, of course, anxious that this should be done, and the council of West Jersey approved the action of their commissioners, and named John Reading to attend Alexander in running the line. But serious opposition came from Col. Coxe, then in England making representations against the Hunter régime. He held large interests



threatened by the act.<sup>1</sup> Accordingly he entered a *caveat* against it,<sup>2</sup> and by his activity made its acceptance by the home authorities doubtful.<sup>3</sup> Still, the line would no doubt have been run had it not been for the retirement of Hunter, who just at this time turned over the government to Burnet. Coxe now returned to the Jerseys, and soon succeeded in gaining a leading influence in the council of West Jersey proprietors itself, of which he actually became president.<sup>4</sup> As a result, the West Jersey proprietors not only refused to coöperate further in the running of the line, but began to make efforts to secure the disallowance or repeal of the act which authorized it.<sup>5</sup> The East Jersey proprietors were therefore left with the act in their favor but without the power to secure its execution in due form. The further development of the question will be considered later.

Closely connected with the question of the division line was the matter of the northern boundary of New Jersey. When the territory concerned was still a wilderness, the exact location of the boundary made little difference. Yet some efforts to adjust the difficulty had been made during the proprietary period. New York had at one time advanced the almost absurd claim that the dividing line should run from the head of Connecticut River to Reedy Island at the head of Delaware Bay. This claim was, of course, based upon a manifest misinterpretation of the working of Charles II's first grant, and was soon given up. It appears that after the meeting held in 1686 by Governors Dongan, Lawrie, and Skene, the surveyors by them appointed proceeded to

<sup>1</sup> *New Jersey Archives*, vol. iv, p. 386.

<sup>2</sup> *Ibid.*, vol. iv, p. 445.

<sup>3</sup> The act was confirmed by the Crown, but not until 1729; *ibid.*, vol.

fix the point  $41^{\circ}$  upon the west shore of the Hudson. This point they located upon the "high cliffs of the Point of Tapaan," one minute and twenty-five seconds to the northward of "Younckers Milne."<sup>1</sup> Nevertheless the rest of the boundary line was left undetermined. But it was later claimed on behalf of New York that the true point fell due westward of Yonkers Mills, and that the division line should run west to the forks on the Delaware, where Easton now stands. It was even asserted that Governor Hamilton of East Jersey had admitted that the point on the Hudson was directly opposite Frederick Phillipp's lower mills.<sup>2</sup>

Under the royal rule the growth of New Jersey to the north and west was rapid, and during the proprietary revival under Hunter divers East Jersey proprietors took up lands in the neighborhood of the upper Delaware. Among these were Willocks and Johnstone. Disputes over land titles became really dangerous to the peace of the provinces,<sup>3</sup> and the matter was made worse by the wholesale smuggling, in which the officials of New York believed that the inhabitants of the disputed district engaged. When Hunter met his last assembly he was, however, able to inform them that he had already procured an act from the assembly of New York, making an appropriation for running the line and authorizing him to appoint commissioners to coöperate in so doing with representatives of the Jerseys. He urged upon the New Jersey assembly the need of action in the matter.<sup>4</sup> The assembly proved willing enough to make suitable arrangements for running the line, but unwilling to put the expense upon the province. An act for running the line was accordingly passed, and the act for determining the

<sup>1</sup> *New Jersey Archives*, vol. i, pp. 520, 521; but see vol. iv, p. 414.

<sup>2</sup> *Ibid.*, vol. iv, p. 434.

<sup>3</sup> *Ibid.*, vol. iv, pp. 441, 446.

<sup>4</sup> *Ibid.*, vol. iv, p. 365.

division line between East and West Jersey ordered that the commissioners named for that purpose should have charge of the running of the province line as well and that their further expenses should also be met by the proprietors.<sup>1</sup> The New York commissioners were Robert Walter and Isaac Hicks, with Allan Jarret as surveyor.<sup>2</sup>

The commissioners proceeded to work promptly. John Harrison of East Jersey was dispatched upon a preliminary trip from the Delaware to the Susquehanna and back again for the purpose of locating all the branches of the Delaware.<sup>3</sup> He was followed by the commissioners, and in due time a tripartite indenture was signed by Walker, Hicks, and Jarret for New York, by Johnstone and Willocks for East Jersey, by Joseph Kirkbridge and John Reading for West Jersey, and by James Alexander as surveyor-general for both Jerseys. This indenture solemnly declared the "so-called Fisk-Kill" to be the northernmost branch of the Delaware as well as the main branch, and located definitely the point  $41^{\circ} 40'$ .<sup>4</sup> But their other proceedings were not so happy. Jarret and Alexander next endeavored to fix the point  $41^{\circ}$  on the Hudson. The result was, however, an annoying difference of opinion. According to Jarret's statement, their first observations made the point fall northward near Tappan Creek, but it soon appeared that the quadrant was incorrect. Alexander pointed out a method for

<sup>1</sup> Allinson, *Statutes of New Jersey*.

<sup>2</sup> *New Jersey Archives*, vol. iv, p. 382.

<sup>3</sup> *Ibid.*, vol. iv, p. 391.

<sup>4</sup> *Ibid.*, vol. iv, p. 393. The recognition of the Fisk-Kill as a branch of the Delaware within the meaning of the original grant was, of course, a great victory for New Jersey in the light of the later controversy. The later contention advanced by New York was that the northernmost point on the Delaware was in  $41^{\circ} 21'$ , where the Fisk-Kill and the Mahackamack, now known as Neversink Creek, branch from the main stream.

correcting the errors of the instrument, but this method Jarret would not accept. As no agreement could be reached, the New York surveyor laid the whole matter before the council at New York, declaring that nothing further could be done until an instrument of five or six foot radius could be obtained from England. He also repudiated the tripartite indenture, although he had previously signed it.<sup>1</sup> The council at New York, considering "that Jarret was selected as the most able mathematician in the province," advised the governor to suspend all operations until the new quadrant could be procured.<sup>2</sup>

But numerous of the New Jersey proprietors, unwilling to surrender their advantage, drew up a memorial, presenting an able argument in favor of Alexander's position. It quoted Alexander to the effect that Jarret had at the time not denied that the errors in the instrument could be rectified, that he had apparently not understood all the mathematical points concerned, and that he had been captious and tried to hinder.<sup>3</sup> This memorial was presented to Lewis Morris, at the time acting as president of the council of New Jersey, and by him sent to the Lords of Trade with a letter in which he declared that the inhabitants on the border line were near bloodshed over the quarrel. They agreed, he said, only in not paying taxes to either colony.<sup>4</sup>

The president of the New York council, Colonel Philip Schuyler, on the other hand, sent to the Lords a copy of Jarret's petition<sup>5</sup> and another from divers inhabitants of the province who were concerned.<sup>6</sup> This latter document

mission, and among other things to the appointment as commissioners for East Jersey of Willocks and Johnstone who were concerned in a pecuniary way in the outcome.

As New York refused to take further action, the matter rested for the time, since the home authorities, of course, took no immediate action. The further developments in the case fall beyond our period, but it may be well to add that eventually in 1767 a commission was named by the Crown to decide, and the line was run from the fork where the Delaware branches into the Fish-Kill and the Mahackamack, in  $41^{\circ} 21' 19''$ , to the rock upon the Hudson first marked by Alexander and Jarret as  $41^{\circ}$ . Neither party gained its entire claim, though the interests of New Jersey were, of course, sacrificed to a far greater degree than those of New York by the giving-up of the point  $41^{\circ} 40'$ . Yet the line was accepted after much grumbling. It is interesting to notice that the point on the Fish-Kill fixed in the tripartite indenture has been sustained as marking the end of the dividing line between East and West Jersey,<sup>1</sup> and that the Fish-Kill itself is now commonly recognized as a part of the Delaware.

In close logical connection with the settlement of the northern boundary was the question of the ownership of Staten Island. This island is, of course, geographically a part of New Jersey, and it was no doubt the intention of Charles II to convey it to Berkeley and Carteret. The government at New York had, however, asserted its authority over the island from the beginning, maintaining that, since one arm of "Hudson's River" flowed around it, it was not conveyed to Carteret.<sup>2</sup> During the proprietary period there had been certain attempts to open the question, not

ably during the brief proprietorship of the Lady Elizabeth Carteret,<sup>1</sup> but nothing had been accomplished. After the surrender to the Crown, the irrepressible Sonmans and Dockwra presented a petition, in 1704, to the Lords of Trade urging the claims of New Jersey to Staten Island,<sup>2</sup> but there was apparently no result.<sup>3</sup> There was, of course, the feeling that the Crown might resent any attempt to assert title to the Island as an attack upon its own power. The question was not reopened actively until after the union period, but it appears that uneasiness had at times been caused by ill-considered assertions of New Jersey's claims.<sup>4</sup>

The almost complete triumph of the proprietors of East Jersey under Hunter was not, however, an unmixed blessing to the province, for we have the confidential assertion of James Alexander that some among them took advantage of their powers to carry through dishonorable speculations in land.<sup>5</sup> This was generally done by misrepresenting the number of acres in surveys. Alexander believed that Johnstone and Willocks were especially guilty, saying that they held a tract of 30,000 acres on the north branch of the Raritan under the name of 3,150 acres. Alexander speaks also of patents for lands given in blank by "the governor" to his friends so that they might fill in any amounts they wished. Which governor Alexander meant does not appear, but it was certainly one of the proprietary executives, as no royal governor could grant such patents.<sup>6</sup>

Just as Hunter left New Jersey a new movement was

<sup>1</sup>*New Jersey Archives*, vol. i, pp. 349, 350, 353.

<sup>2</sup>*Ibid.*, vol. iii, p. 61.

<sup>3</sup>Col. Quarry asserted that the proprietors' "Long Bill" would have robbed the Crown of all Staten Island. *Ibid.*, vol. iii, p. 17.

<sup>4</sup>*Ibid.*, vol. i, p. 38.

<sup>5</sup>*Ibid.*, vol. iii, p. 17.

developing among the proprietors to have themselves "incorporated" by an act of assembly. Alexander believed that the object was not merely to obtain greater efficiency in the handling of the proprietary affairs, but to arrange the terms of the incorporation in such a way as to give complete control to the Amboy clique. The prime movers in the scheme were, as usual, Johnstone and Willocks.<sup>1</sup>

But just as Hunter had shown his statesmanship by committing himself entirely to the proprietary party, so Burnet gave a high proof of his integrity and skill in taking up a more impartial attitude. His administration indeed opened by a sharp break between himself and certain of the proprietors. His violent and somewhat unseemly quarrel with the assembly which he had retained from Hunter's time is described elsewhere. But its underlying cause seems to have been the unwillingness of Burnet to become the tool of Johnstone and Willocks.<sup>2</sup> Burnet not only did not take kindly to the plan for incorporating the proprietors, but also resented bitterly the attempts of Willocks, who was not a representative, to interfere in the proceedings of the legislature.<sup>3</sup> But though Johnstone and Willocks succeeded in causing the governor great vexation during the session of the assembly, they in the end defeated themselves, for neither they nor their methods were popular in the province, and when, upon dissolution, a new body of representatives was chosen, it was favorable to the governor.<sup>4</sup> Throughout the controversy Burnet had made much of the fact that Willocks was an avowed Jacobite. Whether this attitude was due to old-country prejudices, or whether it was merely a ready means of attack upon Willocks, is not certain. But

at any rate Burnet's second assembly was willing to pass an "Act for the Security of his Majesty's Government of New Jersey," which gave the governor or any appointed by him the power to administer the oaths of allegiance to any one suspected of disaffection. If the person refused he was to be prosecuted as a popish recusant, and was to suffer the penalties of the English law. It was made a high crime and misdemeanor for such a person to intermeddle in any way in public affairs.<sup>1</sup> Willocks, now recognizing his defeat, like Coxe before him, fled from the province.<sup>2</sup> Though he continued to intrigue from Philadelphia and Staten Island, his power was gone. Johnstone, whose operations had been better cloaked, escaped disaster.

It is interesting to notice that during the short conflict Johnstone and Willocks had not scrupled to make overtures to leaders of the anti-proprietary party like the Hartshornes and Lawrences of Monmouth and Bonnell and Ogden of Elizabethtown.<sup>3</sup> These persons for a time aided in the attack upon Burnet, but during the second meeting of the assembly broke from Willocks and supported the governor.<sup>4</sup> They rightly calculated that they could gain more from Burnet than from the proprietors. Throughout, however, the abler men among the proprietors like Morris,<sup>5</sup> Alexander, and John Hamilton had stood by the governor, so that the defeat of the partners did not involve the loss of the governor's favor for the entire proprietorship.

The year 1725 marks a most important change in the work of the proprietorship, for during it the plan which had been for some time maturing to revive the council of

<sup>1</sup> Allinson, *Statutes of New Jersey*.

<sup>2</sup> *New Jersey Archives*, vol. v, p. 107.

<sup>3</sup> *Ibid.*, vol. v, p. 61.

<sup>4</sup> *Ibid.*, vol. v, p. 62.

<sup>5</sup> *Ibid.*, vol. v, p. 60.



proprietors was at length carried into effect. The first meeting of the council under the new arrangement was held on March 25 at New York City, and was attended by Lewis Morris, Charles Dunster, John Burnet, Richard Ashfield, and James Alexander, who among them held ninety-nine votes at eight votes to a property.<sup>1</sup> Thus only barely more than a majority interest was represented, but at the ensuing meetings there was a much larger representation of proprietors. Among those attending the meetings down to 1730 were Samuel Leonard, Thomas Humphrey, David Lyell, Thomas Leonard, Daniel Hollingshead, Dr. Johnstone, John Parker, Francis Elrington, Samuel Vaughan, George Lesly, Col. John Hamilton, John Barclay, and Fenwick Lyell. In 1727 Michael Kearney became a member of the revived council in virtue of power given by the will of Charles Dunster. After the retirement of Governor Burnet, George Willocks also appeared. But the leaders during the early years certainly seem to have been Morris, Alexander, Hamilton, and Ashfield.

In the first few meetings much time was given to perfecting the organization of the council. In August, 1725, it was voted that thereafter one-fourth of a propriety was to have one vote; one-half, two votes; three-fourths, three votes; and one whole propriety, four votes. But the total votes to be given any one proprietor should not exceed twelve, and no one should act as a proxy but a proprietor or a proprietary agent. A quorum at a regular meeting was to consist of not less than ten persons, representing at least eight whole proprieties.<sup>2</sup> In 1727, however, the quorum was cut to seven persons, though eight whole proprieties

were still to be represented.<sup>1</sup> Two regular meetings of the council were held annually, but the times of holding them were several times altered, though one was usually held in the spring and one in the fall after the regular sessions of the supreme court.<sup>2</sup> Special meetings were also called when occasion required. Practically all the meetings took place at Perth Amboy.

It was voted to choose a president annually,<sup>3</sup> but the commanding influence of Morris designated him as the natural leader, and he held the presidency of the council of proprietors continuously until August, 1730. All other officers were to hold their places during good behavior or till displaced by a two-thirds vote of all the proprietors.<sup>4</sup> James Alexander was continued as surveyor-general under the authority of the council and James Smith as register, though the duties of the latter were regularly performed by his deputy, Michael Kearney. But almost immediately after the revival of the council Alexander resigned as receiver-general of quit-rents, and Richard Ashfield was chosen.<sup>5</sup> The latter was designated as treasurer also, and he was to have ten per cent of all sums collected, as well as reasonable traveling expenses.<sup>6</sup> Rangers were named by the council for the several counties. But the board made especial haste in engaging the services of able legal counsel, James Alexander, Joseph Murray, and John Kinsey, Jr.<sup>7</sup> The connection of the latter with the proprietors was not, however, permanent, as his natural instincts led him to identify himself with more popular interests.

The effect of the re-establishment upon these lines of the

council of East Jersey proprietors was, of course, to give a greatly increased unity and energy to the proprietorship. It is true, however, that even after the reorganization of the council a degree of carelessness and laxity still prevailed which would be almost unimaginable in the conduct of a modern business enterprise. Such increase of strength as was obtained came, nevertheless, at the right time, for the proprietorship was soon compelled to face circumstances almost as trying as those of "the Revolution" of 1699. The most difficult questions with which the council had to struggle were those connected with the settlement of the boundary dispute with West Jersey, and the reopening in a very serious form of the Elizabethtown controversy. So important, indeed, are these matters that they must be reserved for a separate consideration. Before taking them up let us study briefly the other work accomplished by the council.

In the political field the council did not accomplish very great results. At its first meeting in 1725 the president of the council was ordered to frame one or more bills to lay before the general assembly for effectually settling the proprietary rights.<sup>1</sup> But the assemblies under Burnet proved unwilling to take any decided action on behalf of the proprietorship, and it does not appear that such a measure was actually introduced. On the other hand, the assembly of 1727 was eager to secure the passage of measures to regulate in a manner more convenient to the inhabitants the recording of land titles and deeds. As a result an "Act concerning the Acknowledging and Registering of Deeds and Conveyances of Land"<sup>2</sup> was passed, which provided

<sup>1</sup> *Minutes of the Council of Proprietors of East Jersey*, bk. A, p. 1.

<sup>2</sup> Allinson, *Statutes of New Jersey*. This law was virtually a re-enactment of a previous measure which had been disallowed by the Crown in

for the recording of deeds and conveyances in the respective counties by the county clerks and made it no longer necessary that they should be recorded by the provincial secretary alone at Burlington or Amboy. The house also made an effort to carry a bill for prescribing the time for recording surveys,<sup>1</sup> and another "for preventing the trouble and expense relating to the enrollment of deeds and conveyances of land."<sup>2</sup> But the council, which of course contained Morris and other leading proprietors, insisted that the latter bill should be amended so that all deeds of proprietors should be recorded only at the register's office, as, if they were recorded at any other place, it would be difficult to tell what share of each propriety was laid out, and thus "the door would be opened for frauds." But the house held that such a provision in the law was unnecessary, as the council of proprietors might make any rules it deemed necessary for proprietors, and as things then stood it was not necessary that deeds should be recorded anywhere.<sup>3</sup> After a lengthy and rather acrimonious discussion both measures failed.

The council of proprietors early considered the matter of the quit-rents, which, as usual, seem to have been in arrears. In October, 1725, the receiver-general was directed to apply himself to their collection with all diligence,<sup>4</sup> and in the next year, upon his own request, he was given an assistant. At that time Ashfield submitted an account of the cash in hand for the use of the proprietors, which proved

1721. It was also disallowed upon the plea of James Smith although at the time it was passed he made entry upon the council journal that he was satisfied to receive £25 per annum in lieu of the fees which were reduced. *New Jersey Archives*, vol. xiv, p. 386; vol. v, p. 198.

<sup>1</sup> *Assembly Journal*, Feb. 2, 1727-8.

<sup>2</sup> *Ibid.*, Jan. 11, 1727-8.

<sup>3</sup> *Ibid.*, Feb. 6, 10, 1727-8.

<sup>4</sup> *Minutes of the Council of Proprietors of East Jersey*, bk. A, p. 7.

to be £401, 16s, 3d.<sup>1</sup> It is impossible to tell, however, just what part of the rents or for how long a time this sum represented. To aid Ashfield in his work the proprietors drew up an address to Burnet praying him to issue a proclamation in his favor as the legitimate collector of quit-rents, just as Cornbury had done first for Barclay and then for Sonmans.<sup>2</sup> Such action had, indeed, been rendered necessary by the return of Sonmans to the province and the active renewal of his pretensions. With the request of the council Burnet complied, and the proclamation was issued in due form.<sup>3</sup> The proprietors then drew up an address of acknowledgment, which Morris at once read to the governor in person, and which he received kindly. The address stated that the proprietors had always understood that they had surrendered the government to the Crown on condition that their civil rights be protected.<sup>4</sup>

During their sessions applications were made to the board by divers persons for warrants of survey upon proprietary claims under the several dividends of land already voted. These were examined carefully, and several warrants were given. But since the council was obliged to consume much time in examining into the validity of such claims, it was eventually voted, in 1737, that all applications be made to the register and that he make the proper searches. Every month those members of the board who lived near Amboy were to meet, and any three with the register were to be a committee to make further examinations of the claims and report the same to the council.<sup>5</sup>

From the very necessity of their position the council was

<sup>1</sup> *Minutes of the Council of Proprietors of East Jersey*, bk. A, p. 11.

<sup>2</sup> *Ibid.*, p. 16.

<sup>3</sup> *Ibid.*, p. 8.

soon involved in legal proceedings. The earliest actions authorized were against the holders of tracts which had been granted by Peter Sonmans during his usurped directorship of proprietary affairs under Cornbury. Suits in chancery were ordered begun, as early as 1725, against May Bickley and his partners in the Essex tract called New Britain, and against Peter Fauconnier and his associates in the Ramapo tract in Bergen County, already mentioned.<sup>1</sup> But these very troublesome cases dragged on without any very definite result.<sup>2</sup> In consequence the board, in 1728, endeavored to engage Andrew Hamilton, the celebrated "Philadelphia lawyer," as general counsel for the proprietors. But Hamilton refused a general retaining fee, though he agreed to act in separate cases if he approved of them. The board voted to submit to him the state of the Ramapo and New Britain cases.<sup>3</sup> But though the suits continued to occupy the attention of the board, the proprietors did not succeed during the union period in obtaining decisions definitely making void Sonmans' grants.

The council also began, in 1726, another fruitless proceeding in chancery against Sonmans to compel him to give an account of the quit-rents he had collected.<sup>4</sup> But that bold adventurer upon his return to the province not only defied the council, but, as has been elsewhere shown, ventured to exercise his commission as receiver-general of quit-rents given by Dockwra and the "English Proprietors" in Cornbury's time.<sup>5</sup> His authority was recognized by the corporation of Bergen, and the legitimate proprietors were in con-

sequence defrauded of considerable sums.<sup>1</sup> For this conduct Sonmans was prosecuted by the attorney-general of the province upon information for fraud.<sup>2</sup> But, though it was no doubt the influence of the proprietors which led to his prosecution, the case was not conducted by them directly. Sonmans, though hard pushed, escaped direct condemnation and continued to make trouble for his opponents, though not so openly as before.

When Burnet was, in 1728, succeeded by Montgomerie the council of proprietors naturally desired to establish relations with the new governor as cordial as those which had existed with Burnet. They therefore drew and presented an address of congratulation to Montgomerie upon his safe arrival.<sup>3</sup> Morris, who prepared the address, again put in a clause stating that the proprietors had surrendered on condition that their private rights be guaranteed. In the next year the board petitioned the new governor for a proclamation in favor of Ashfield as receiver-general of quit-rents, citing the precedent of Burnet.<sup>4</sup> But Montgomerie was not in power long enough to develop any decided policy toward the proprietorship, if, indeed, he was capable of doing so.

In 1730 the activity of the council of proprietors was rather abruptly interrupted by the withdrawal of Lewis Morris, its president, who last attended a meeting in August of that year.<sup>5</sup> Col. John Hamilton succeeded him first as vice-president and then as president. At about the same time Morris succeeded to the administration of the Jerseys as president of the royal council, and began his canvass to

<sup>1</sup> *New Jersey Archives*, vol. xiv, pp. 311-2, 314-6.

obtain the governorship itself. These circumstances perhaps account for his rather sudden retirement from the proprietary concerns, for at about the same time he surrendered his position as agent of the West Jersey Society, a post which had undoubtedly added much to his power and influence. In his place the Society named Joseph Murray, Jeremiah Lattouch, and Joseph Haynes as agents in East Jersey.<sup>1</sup> The result of Morris's withdrawal seems good proof that he had been the chief directing force in the proprietary affairs. From 1725 to 1730 the council had met regularly, and although there had been in some instances carelessness in executing its decisions, its business had been transacted in a fairly systematic way.

But after the retirement of Morris there was a sharp change. It is true that one or two important matters were transacted during the next few meetings. In October, 1730, the great step was taken of declaring a new dividend of the unoccupied land. This dividend was to be of two thousand acres to a propriety, and so in proportion.<sup>2</sup> It was to be made three years after date, and public advertisement was to be put in English papers and in the *New York Gazette* so that all proprietors might have due notice and provide for their interests. The movement to obtain incorporation for the proprietors was also revived.<sup>3</sup> But after the meeting of July, 1731, a strange period of chaos occurs, and no further meeting of the council is recorded until December, 1735. During this interval the proprietary concerns suffered from neglect, yet it seems to have been only the urgent necessity arising out of the Elizabethtown



governor, Cosby, and Morris and Alexander, which for the time completely destroyed the influence of the latter gentlemen in public affairs. Cosby, however, remained on excellent terms with Col. Hamilton and with the majority of the proprietors, whose later opposition to Morris was perhaps not entirely unconnected with his sudden abandonment of their mutual affairs.

Two circumstances make clear the neglect suffered by the proprietary concerns during the suspension of the council. In 1735 it appeared that Ashfield, owing to the obstructions of Sonmans, had for several years been able to collect no quit-rents. The revived council endeavored to remedy this loss by applying to Cosby for a new proclamation in favor of their receiver-general.<sup>1</sup> But more discreditable was the fact that in 1737 it was found that nothing whatsoever had been done either toward advertising the dividend of land voted in 1731 or toward executing it.<sup>2</sup> It was now ordered that the dividend be made in two years, and that thereafter there be yearly dividends until the whole of the land was apportioned. Murray and Alexander were made a committee to see that the required advertisements were duly published.<sup>3</sup> At the next meeting, in August, 1737, entry was made upon the minutes of the public notice of the dividend. All proprietors were to see that their agents were on hand to locate their lands. Otherwise they were to be themselves to blame if they got poor land.<sup>4</sup>

But, after all, the two subjects which had from the beginning required the closest attention from the council were the running of the boundary line between East and West Jersey and the Elizabethtown question. In

mittee to consult with the proprietors of West Jersey with a view to securing their co-operation against the New Britain claimants. The same committee was also to concert measures for the running of the division line already authorized by act of assembly.<sup>1</sup> But four months later nothing had been accomplished, and the council instructed Col. Hamilton to write a letter to James Logan, of West Jersey, regarding the necessity of running the line.<sup>2</sup> As no result was thus gained the council, in May, 1727, voted that application be made to Governor Burnet to appoint two commissioners for running the line, since Lyell and Harrison, named for East Jersey in the act of 1718-19, were dead. Parker and Ashfield were suggested.<sup>3</sup> But the retirement of Burnet prevented action.

Meanwhile the influence of the Coxes had been exerted with the home authorities to secure the disallowance of the act for running the dividing line which, like so many other provincial acts, had been suffered to stand without formal approval. Therefore, in 1728, the council voted to employ an agent in England to solicit the passing of the measure. Morris, Alexander, and Ashfield were a committee to employ a fit agent and to correspond with him. £50 were voted from which were to be supplied such sums as the agent would need.<sup>4</sup> The committee promptly wrote to Peter La Heupe, who had been for a short time the agent of the assembly, asking him to undertake the work.<sup>5</sup> He was informed that the great majority of the West Jersey

<sup>1</sup> *Minutes of the Council of Proprietors of East Jersey*, bk. A, p. 8.

<sup>2</sup> *Ibid.*, p. 14.

<sup>3</sup> *Ibid.* = 1727. In the session of the assembly of 1727-28 John Kincaid

proprietors approved of the division and that it was opposed only by Coxe and a few persons who held small interests. There might be some opposition from Partridge, the regular provincial agent, yet as he had no instructions from any part of the legislature he ought not to act. La Heupe was also furnished with a list of "considerable persons" in London who held interests in the Jerseys and who might give assistance. Charles Dominique was designated as head of their affairs, but the list also included Robert Mitchell, John Bridges, Levi Ball, and others.<sup>1</sup> La Heupe accepted the position, but wrote that there had been as yet no opposition to the act. A second letter said that he had a favorable report from the Lords of Trade upon the measure.<sup>2</sup>

In August, 1730, a letter was received from the West Jersey proprietors proposing an accommodation about the division line.<sup>3</sup> But at the next meeting the council voted that the West Jersey proprietors have timely notice regarding the line, and that if they did not agree East Jersey would run it separately.<sup>4</sup> Four thousand acres of land were to be disposed of to cover the expense. But decisive action was again hindered, first by the temporary suspension of the council which followed the retirement of Morris, and then by the threatening character of the Elizabethtown dispute. So dangerous did the latter affair indeed become that the council was obliged to seek the aid of the West Jersey proprietorship. It could not afford therefore to offend its possible allies. In March, 1738, Col. Coxe was himself present at a meeting and requested from the council of West Jersey that a committee be named to see about the

<sup>1</sup> *Minutes of the Council of Proprietors of East Jersey*, bk. A, p. 24.

<sup>2</sup> *Ibid.*, p. 25. The act was confirmed by the Crown in 1729; *New Jersey Archives*, vol. xiv, p. 451.

dividing line. Murray, now vice-president, of the East Jersey council, Alexander, and Lyell were named, but as usual nothing decisive resulted.<sup>1</sup> The negotiations dragged on beyond the union period until 1743, when the proprietors of East Jersey finally had the line run independently by John Lawrence. Later attempts to annul this survey failed, and the Lawrence line has remained since that time as the boundary between the eastern and the western division.

When the council was re-established in 1725, there seemed good reason for believing that the Elizabethtown question was at least on the way toward final settlement. The favorable decision in the case of Vaughan *vs.* Woodruff had in a sense established the claims of the proprietors, and the subsequent conduct of at least a part of the inhabitants of Elizabethtown in obtaining proprietary titles seemed a further recognition. Under the circumstances it seemed both possible and desirable for the proprietors to come to a definite understanding with the town. Accordingly, in October, 1725, the council named a committee to treat with the Elizabethtown people, that "the affair" might be compromised in the most amicable manner. This committee consisted of Morris, Hamilton, Ashfield, and Alexander, the ablest members of the council.<sup>2</sup> But four months later the committee had apparently done nothing, and Alexander was directed to write to Joseph Bonnell as the representative of the town, stating that the committee was prepared to receive any proposals by letter or to arrange a meeting.<sup>3</sup> The letter was duly sent; and, in July, 1726, it was voted that at the next meeting the council would take up the Elizabethtown question.<sup>4</sup> Mr. Bonnell was acquainted, and told that

<sup>1</sup> *Minutes of the Council of Proprietors of East Jersey*, bk. A, p. 55.

<sup>2</sup> *Ibid.*, p. 7.

<sup>3</sup> *Ibid.*, p. 14.

<sup>4</sup> *Ibid.*, p. 15.

the object of the council was to establish good feeling between the proprietors and all the inhabitants. But as an illustration of the strange negligence which is such an unaccountable characteristic of the management of the proprietary concerns, we find that at the next session the Elizabethtown question was not considered at all, nor is it again referred to in the proprietary minutes until the renewal of the council in 1735.

But instead of being dropped, the dispute was actually about to enter a new and acute stage. Because of the reluctance of the Elizabethtown people to come to an understanding which would involve a surrender of their claims under the Nicolls grant, the legal advisors of the proprietors evidently concluded to push proceedings against them in the courts. Accordingly in 1731 sundry ejectment suits were brought in the interest of the proprietorship at the suit of Patrick Lithgow on the demise of Peter Schuyler, as assignee of Philip Carteret to recover lands surveyed for Sir George and Philip Carteret and granted by patent April 24, 1682. This tract was now held by John Robison, Henry Clarke, Andrew Craig, Joshua Marsh, and others under the Clinker Lot survey.<sup>1</sup>

There is every indication that both parties thoroughly understood the importance of the issue, and were ready to meet it, for the cases came to trial on May 17 and 18, 1733.<sup>2</sup> The chief justice, R. L. Hooper, presided, and the jury, drawn from Middlesex, was selected with every precaution. The case of Lithgow *vs.* Robinson was taken up first as the test case. Both parties were represented by the ablest counsel available; the proprietors by Murray and Alexander, later the authors of the Bill in Chancery; and the Eliza-

<sup>1</sup> Elizabethtown, N. J., 1731.

bethtown people by John Kinsey, the politician and speaker of the assembly, and Richard Smith of New York. The weighty aspect of the case is proved by the fact that the hearing was continued "at above Nineteen Hours." The chief justice summed up the evidence "at five of the clock in the morning." But although the proprietors had been confident of success, the jury next day found for the defendant, and a victory had been achieved for Elizabethtown comparable only to that won by Jeffry Jones. After the decision for Robinson the plaintiff defaulted in the other cases, and was non-suited. The Bill in Chancery maintains that the somewhat astonishing verdict against Lithgow was due wholly to the defect of the lessor of the plaintiff's title, and was not based upon the Nicolls grant.<sup>1</sup> But this is strongly denied by the Answer to the Bill,<sup>2</sup> and there is nothing in the records of the court to show that such was the case. It was certainly the popular impression that the Elizabethtown claimants had been upheld.

The effect of the decision in the Schuyler case was very similar to that of the decision of Jones *vs.* Fullerton in 1697, for it gave renewed hope and determination to the Elizabethtown claimants who, since the case of Vaughan *vs.* Woodruff, had been on the defensive. In August, 1720, after that defeat, the freeholders of Elizabethtown had chosen a committee of seven to represent them in all matters touching their claims.<sup>3</sup> The members appear to have served at the pleasure of the town. Among those originally chosen were John Blanchard, Capt. Joseph Bonnell, and John Crane, while Benjamin Bond, Joseph Woodruff, and John Harriman became members later. This was evidently

<sup>1</sup> *Elizabethtown Bill in Chancery*, p. 47.

<sup>2</sup> *Answer to the Elizabethtown Bill in Chancery*.

<sup>3</sup> Hatfield, *History of Elizabeth*, p. 310.

the body with which the council of proprietors had vainly tried to negotiate. In 1732 the membership of the committee was almost completely changed, though it still included John Crane and Joseph Bonnell.<sup>1</sup>

But after the victory in the Schuyler case more energetic action was in order. The first step of the associates was to select a committee of three trustees: Nathaniel Huttell, John Crane, and Joseph Shotwell, and to enter into bond to pay to the said trustees such sums, (not exceeding £10 proclamation money for each person), as should be duly assessed by the trustees toward defraying the charges of maintaining the Elizabethtown title, according to the judgment and discretion of the committee of seven.<sup>2</sup> It was further agreed, in July, 1734, to dispose of a considerable tract of land to pay the expenses of litigation.<sup>2</sup> The associates, also, made efforts to win over the tenants who were actually in possession of proprietary lands within the disputed area. As an inducement they offered to sell to such tenants the lands which they held at £5 per hundred acres, and to guarantee the defense of the new titles to the extent of the common fund. These offers were in certain cases at least, accepted.<sup>3</sup>

The associates next, just as in 1699, took steps for the survey and apportionment of the outlying portions of the land which according to their claims lay within the limits of the Nicolls grant, and which had not been divided among themselves in the Clinker Lot survey. At a town meeting in March, 1734-5 the seven trustees were authorized to lay out the common land of the town lying "back of the first mountain," to divide the same into one hundred acre lots, and to make them over to the associates by lot.<sup>4</sup> After further

legal proceedings had been begun by the proprietors, however, it was voted at a town meeting in September, 1735 that a large tract be disposed of to meet the resulting charges.<sup>1</sup> This was "a certain tract or parcell of land lying west from a place known by the name of Baskine Ridge and between the West Jersey line not to exceed eight miles upon the east and west line, and to extend to our utmost bounds upon the north and south lines." This land was to be sold for not less than £2000, and the associates reserved the right to retain one-third part for their own use if required.

A considerable tract of land still lay unappropriated west of the surveys of 1699-1700. But in November, 1736 steps were taken to apportion this also.<sup>2</sup> At a town meeting Joseph Morse was elected and qualified as town surveyor, and the work duly assigned to him and the committee of seven. The whole of the district involved was regularly surveyed into 280 one-hundred-acre lots, the work being accomplished by Morse and William Courson of Staten Island, acting with various assistants chosen by the town. In March, 1738, report was duly made to the town meeting, and arrangements were made for the assignment of the new tracts by lot among the associates and those who had purchased of them according to the original arrangement of first, second, and third lot rights.<sup>3</sup> It was claimed by the proprietors in the Bill in Chancery that the surveys of Morse and Courson were made by stealth and at night,<sup>4</sup> but this accusation is just as strongly denied by the associates.

The proprietors, as we have seen, were suddenly confronted by such aggressions at a time when their council



the proprietors was called by Col. Hamilton, though apparently at the instance of Alexander, to consider the astonishing proceedings of Elizabethtown.<sup>1</sup> The proprietors, however, had difficulty in learning what actions the associates had really taken. It was nevertheless voted to bring the Elizabethtown affair to an end by suits, and it was resolved that, as a fund for that purpose, each land owner in the province contribute five shillings for every one hundred acres.<sup>2</sup> The proprietors of West Jersey were also addressed to bear some part of the charge. But no positive step could be taken until one John Vail, a proprietary supporter, should report to the board exactly what Elizabethtown had done.<sup>3</sup>

In April, 1737, Vail reported fully to the council the proceedings of the town surveyors and committee.<sup>4</sup> The south bound of the Elizabethtown claim had been run from the mouth of Robinson's branch on Rahway River west until it crossed the north branch of the Raritan, about five chains. Later the town surveyors had begun to run their north bound at the mouth of the Passaic, and had carried it west twenty-one miles. The proprietary council promptly resolved that six ejectment suits be begun in Somerset County "to try the Elizabethtown pretense." Fenwick Lyell was put in charge of the suits, and a subscription was raised by the proprietors present to cover his expenses until reimbursement could be made from the proprietary funds.<sup>5</sup> To reward Vail for his information he was excused from his contribution of five shillings for every one hundred acres.

At the next council, of August, 1737, Lyell was obliged to report that he had not been able to begin his suits, as he

<sup>1</sup> *Minutes of the Council of Proprietors of East Jersey*, bk. A, pp. 38-39.

<sup>2</sup> *Ibid.*, p. 41.

<sup>4</sup> *Ibid.*, p. 43.

<sup>3</sup> *Ibid.*, pp. 40-41.

<sup>5</sup> *Ibid.*, p. 44.

had found no evidence that Elizabethtown people had trespassed, except that John Crane in running the line had marked several trees on lands of Stephen Vail.<sup>1</sup> Lyell was ordered to secure further evidence and to prosecute Crane if he was able.<sup>2</sup> But meanwhile the associates themselves brought an action against John Vail on the demise of one Joseph Halsey. Since Vail held under the proprietors Lyell promptly undertook his case. The council approved and directed Alexander and Murray to assist.<sup>3</sup> At the same meeting, in March, 1738, the proprietary counsel received power of attorney from one Daniel Cooper to bring action for trespass against certain persons, said to be of Elizabethtown, who had done injury to his land. The board gave security to Cooper that he should be saved harmless from the suit and indemnified and ordered Alexander and his colleague to bring suit according to the statement offered by one John Airs of Basking Ridge, who declared that Joseph Morse, the surveyor, John Crane, and others acting for Elizabethtown had crossed Cooper's land and gone through his green wheat.<sup>4</sup> Actions for trespass against Morse, Crane, and four others concerned were accordingly begun.

To the pending cases of *Jackson vs. Vail* and *Cooper vs. Morse et al.* another must also be added. It appears that in 1736 several servants of the Penns had been won over by the Clinker Lot claimants. Accordingly the proprietors began several ejectment suits in the name of James Fenn against these tenants. In one of them John Chambers was defendant, and in another, one Alcorn. The Penn tract involved covered 7,500 acres.<sup>4</sup> Other actions also

<sup>1</sup> *Minutes of the Council of Proprietors of East Jersey*, bk. A, p. 48.

<sup>2</sup> *Ibid.*, p. 49.

<sup>3</sup> *Ibid.*, p. 54.

<sup>4</sup> *Elizabethtown Bill in Chancery*, p. 48.

followed, one of which concerned 9000 acres in West Jersey owned by James Logan.<sup>1</sup> Logan's tenants, like those of Penn, had been won over by the Elizabethtown committee.

While these great questions were still pending, the union period came to an end. Eventually the proprietors won verdicts in the cases of Cooper and of Fenn, but in the Vail case they met reverse.<sup>2</sup> The further ejectment proceedings and the riotous disturbances to which they led must unfortunately not be considered here. Nor can the celebrated chancery proceedings, intended by the proprietors to make a definite ending of the entire controversy, be touched upon. The great chancery suit had at least the result of giving to the historian Alexander's able *Bill in Chancery* and the *Answer* of the Associates, but the eventual suspension of the proceedings left the cause without other issue than the failure of the proprietors to establish their rights during the colonial period.

<sup>1</sup> *Elizabethtown Bill in Chancery*, p. 51.

<sup>2</sup> *Ibid.*, pp. 48, 49, 50.

## CHAPTER XXVIII

### THE PROPRIETORSHIP UNDER ROYAL RULE

#### WEST JERSEY

A STUDY of the proprietorship of West Jersey does not disclose such a savage clashing of interests as took place in the affairs of the proprietors of East Jersey. Nevertheless the management of the proprietary concerns in the western division was to a considerable degree determined by the changing relations of three dominating interests. The first of these was commonly called "the Quaker interest." By this term was meant the party among the proprietors resident in the province which had been acting chiefly under the lead of Samuel Jennings and of Thomas Gardiner, the Second. It included a large part of the share-holders in Burlington and Gloucester counties and was made up of Friends and persons in sympathy with them. The student is in almost unavoidable danger of confusing this numerous element with the entire proprietorship. But there was a second very active interest headed by Col. Daniel Coxe. Coxe himself held the third largest single interest in West Jersey, and in his operations was supported by a following of smaller share owners, chiefly persons opposed to Quaker domination. Thirdly there was the large proprietary interest of the influential West Jersey Society. This company during the royal period included among its mem-

persons resident in England. It had, however, been represented in the Jerseys by Governor Andrew Hamilton as agent and, after his death in 1702, was to have the advantage of the services of Lewis Morris in the same capacity. These three interests, though not usually hostile to the same degree as the factions of the East Jersey proprietorship, were to some extent opposed. There usually existed a coöperation of two of them against the other.

When the period of proprietary government came to an end in West Jersey the management of the land system lay, of course, in the hands of the council of proprietors, and this body retained its position under the royal rule. Its nine members continued to be chosen at annual meetings of the proprietors held at Burlington and Gloucester,<sup>1</sup> and to select their own officers,—a president, vice-president, clerk, and surveyor.<sup>2</sup> But under the royal government the council naturally carried its functions somewhat further than it had done previously. Separate commissioners for the several counties to pass upon land claims presented and to order surveys thereon ceased to be appointed, and instead the council required that all claims for land should be submitted to it directly and that the surveyor should act only upon warrant issued by its own direct authority. It therefore followed that its meetings were taken up in great part in considering claims entered for land upon proprietary shares and in authorizing surveys.<sup>3</sup> Such work required frequent and rather lengthy meetings. In 1717 it was voted that the council meet regularly on the second Tuesday of May, August, November, and February.<sup>4</sup> But special

<sup>1</sup> *New Jersey Archives*, vol. iii, p. 223.

<sup>2</sup> It also regularly named rangers for the several counties.

<sup>3</sup> *Minutes of the Council of Proprietors of West Jersey*, *passim*.

<sup>4</sup> *Ibid.*, bk. 3, p. 177.

meetings took place on call by the president. The council nearly always met at Burlington. While it cannot be said that its proceedings were absolutely free from the confusion and carelessness which mark so many eighteenth century enterprises, its records show that upon the whole the council conducted its work in a painstaking and business-like way. Especially when compared with the slipshod proceedings of the East Jersey proprietorship its work seems creditable in a high degree.

During the closing years of the proprietary period the council under the presidency of Governor Hamilton, the agent of the West Jersey Society, had been taking steps with a view to an extensive Indian purchase above the Falls of the Delaware from which a third dividend on proprietary shares might be made.<sup>1</sup> But the death of Hamilton and the confusion incident to the overthrow of the proprietary government caused delay. The council, however, continued to carry on its plans under the presidencies of Mahlon Stacy, John Wills, and William Biddle.<sup>2</sup> By June, 1703, two large tracts, estimated at 150,000 acres, had been purchased at a cost of about £700, but the council was intent upon obtaining additional lands from the Indians so as to allow a dividend of 5000 acres to a propriety. It was voted by the council, therefore, to give public notice to the proprietors in England and elsewhere of their designs. All proprietors who would bear their share of the purchase, which would be about £24 to a propriety, were to receive their rights in the new tracts. But if the absent proprietors neglected to coöperate through their agents the proprietors resident in the province were

eral meeting of all proprietors interested was announced for July 19th, next, at Burlington.

During the ensuing meetings the council considered the reports of the agents who had negotiated with the Indians and took steps to pay to the natives what was wanting in the purchase money.<sup>1</sup> But it is evident that the death of Hamilton had destroyed the understanding between the "Quaker Interest," represented in the council by such men as Jennings, Biddle, Deacon, Wills, Hall, Wetherill, and Kay, and the West Jersey Society. In April, 1704, Paul Dominique, John Bridges, and Robert Michel presented a memorial to the Lords of Trade asking that the persons "calling themselves the Council of Proprietors residing in Jersey" be restrained by the royal governor from purchasing and taking up lands without the knowledge or consent of the proprietors in England.<sup>2</sup>

But certainly the chief danger to the Quaker interest did not come from the West Jersey Society. Lord Cornbury had from the first displayed his hostility to the Friends. The royal council already contained Thomas Revell and Daniel Leeds, two leaders of the "Basse faction" in West Jersey, and in 1706, Col. Daniel Coxe himself was appointed and at once became a prominent force in the administration.<sup>3</sup> The death of Deacon, and the resignation of Jennings left the executive department of the province almost completely under the influence of men opposed to Quaker control in any form, and the political clash described at such length in former chapters between Cornbury's administration and the proprietary party of both Jerseys was becoming ever more bitter.

<sup>1</sup> *Minutes of the Council of Proprietors of West Jersey*, bk. ii, pp. 19, 23 (among loose pages).

<sup>2</sup> *New Jersey Archives*, vol. iii, p. 50.

<sup>3</sup> *Ibid.*, vol. iii, p. 125.

Therefore, in November, 1706, Cornbury caused a summons to be issued to "those that Call themselves the Council of Propriet'rs of ye Western Devission" to attend upon him in council at Burlington to show by what authority they pretended to act as a council. In the meanwhile they were ordered to forbear laying out lands or making purchases from the Indians without first obtaining the governor's license as required by the recent act for regulating the purchasing of lands from the "Indeans."<sup>1</sup> This order was considered by the council of proprietors, but no action was taken as the time was thought too brief.<sup>2</sup> As a result the council was forthwith suspended by the governor. Under date of May 30, 1707, the members of the council presented a statement to Cornbury describing the origin, constitution, and legal authority of their body.<sup>3</sup> But their action, of course, caused no change in his Lordship's attitude.

The conduct of Cornbury toward the West Jersey proprietorship, just as his interference with the affairs of the owners of East Jersey, became therefore one of the important political questions before the province. In the great remonstrance of 1707 the suspension of the West Jersey council was formally stated as a case of oppression.<sup>4</sup> In his answer to the remonstrance Cornbury declared in justification of his conduct that, as he was commanded by his instructions to allow only such proprietary agents to act as had qualified themselves by taking the proper oaths, and as the so-called council had never presented themselves

<sup>1</sup> *New Jersey Archives*, vol. iii, p. 158.

<sup>2</sup> *Minutes of the Council of Proprietors of West Jersey*, bk. ii, p. 23 (loose leaves).

<sup>3</sup> *New Jersey Archives*, vol. iii, p. 220.



to take the oaths, he was only carrying out his duty in prohibiting them from acting. Moreover they were people pretending to act upon powers derived from those who had no power to grant.<sup>1</sup> But in their reply to Cornbury's answer to their remonstrance the assembly showed clearly the weakness of his contentions. It set forth that, as the governor had not published his instructions, proprietary agents could not be expected to present themselves to meet qualifications of which they knew nothing. Cornbury had moreover never required the council of proprietors to take the oaths. But in any case the said council were not agents within the meaning of the royal instructions.<sup>2</sup> No one concerned seems to have been in the least deceived as to the governor's real motives.

But the misfortunes of the "Quaker interest" brought them at least one good result. Lewis Morris, now the agent of the West Jersey Society, was of course the most prominent leader of the opposition to Cornbury. Moreover the interests of that powerful company in both Jerseys were equally endangered by the arbitrary proceedings of Cornbury. As a result the Society drew up two petitions to the Lords of Trade, exposing the political abuses of the administration.<sup>3</sup> Though these memorials naturally did not mention the suspension of the council of proprietors they did make much of the exclusion of the three Quakers, Thomas Gardiner,<sup>4</sup> Thomas Lambert, and Joshua Wright from the second assembly upon the protest of Revell and Leeds. By the very circumstances of the case coöperation between the

<sup>1</sup> *New Jersey Archives*, vol. iii, p. 192.

<sup>2</sup> *Ibid.*, vol. iii, pp. 256-261. The assembly speaks of Morris as president of the council.

Society through Morris and the Quaker interest was restored. There seems, also, little doubt that the activity and influence of Dominique, Richier, and Lane did much toward opening the eyes of the home authorities to the true character of Cornbury's rule.<sup>1</sup>

As long as Cornbury continued in power the proprietary machinery in West Jersey remained suspended. But immediately upon the accession of Lovelace the council of proprietors resumed operations with Lewis Morris, agent of the West Jersey Society, as president and William Biddle as vice-president. Biddle, however, frequently presided as Morris naturally did not attend all the meetings. Thomas Gardiner was of course continued as surveyor and John Reading as clerk.<sup>2</sup>

Work regarding the new Indian purchases was at once resumed. At the first session, in September, 1708, the council ordered that a general survey should be made of the recently acquired tracts, that it might be known what sum must be paid for the purchase proportional to the quantity of land that each proprietor was to take up. It was also agreed that those having right to less than five hundred acres should take up their land all in one tract.<sup>3</sup> For the apportionment of the land it was determined that according to the number of persons obtaining warrants at each sitting of the council lots should be made and numbered, and according to the number each investor drew he should have the survey of his land made, leaving no intervals, but taking up the same contiguous to the next person. But, in case any proprietor rejected his lot, the person holding the next successive number was to take his place, and if he refused.

<sup>1</sup> *New Jersey Archives*, vol. iii, pp. 117, 127.

<sup>2</sup> *Minutes of the Council of Proprietors of West Jersey*, bk. ii, p. 7.

<sup>3</sup> *Ibid.*, bk. ii, p. 7.

the next, and so on till the last number. Persons continuing to refuse might have their land in a second new purchase which was already under contemplation. But the person drawing the first number might have his land where he chose providing it was on one of the outside lines of the purchase.<sup>1</sup> The renewed influence of the Society clearly appears, however, in the vote that Morris as its agent might take up 40,000 acres at the uppermost end of the tract and 60,000 acres adjoining it in the future purchase.<sup>2</sup>

From this point on numerous warrants for lands in the recent purchase begin to be granted, and at the next session of the council, in November, 1708, it was resolved that warrants for unoccupied lands in the old purchases should also be granted to such as requested them if they had paid their proportions in the new purchases above the Falls.

But in the meeting of April, 1709, with Morris presiding, it was determined that the new Indian purchase above the Falls should continue still undivided until another purchase of all the land in West Jersey above the said tract could be effected. Then all the land was to be taken together and a division of the whole made with all convenient speed. Notice was forthwith given of this further project, so that as many proprietors as pleased might advance money for the new enterprise.<sup>3</sup> Interest of eight pounds per cent was to be allowed upon all advances for either of the purchases until the dividend was made.

The extensiveness of the new operations, however, led the council to take increased precautions to prevent irregularities. In February, 1709, a new rule was adopted that henceforth, upon all warrants for surveys that should be executed, the surveyor-general should return a draught and

be inspected and approved. Only after such approval was the survey to be recorded in the office of the surveyor-general.<sup>1</sup>

So far the proceedings of the council, since the renewal of its activity, had gone with great apparent smoothness and unanimity. It proved, however, a matter of some difficulty to maintain the good understanding between the energetic Morris and rest of the council. Morris evidently regarded the vote of the council declaring that "the Society" might have 60,000 acres lying next to the purchase on the Delaware as giving him proper authority to make an entirely independent Indian purchase. But the council resented his effects and thought it necessary to write to Lieutenant-Governor Ingoldsby entreating him not to grant a license for any Indian purchase except upon certificate duly signed by the proprietors' recorder.<sup>2</sup> A letter was also "writt" to Morris expressing surprise at his proceedings. It was stated that the purchase under consideration was to be made by the proprietors in general to the use of the whole. No particular person had been designated for "that piece of Service." The letter contained moreover a broad hint that the council was grieved at Morris's failure to attend its sessions.<sup>3</sup> Meanwhile the council had considered, though without any definite decision, the breaking-up of the tracts above the Falls held so long in common. Morris was informed that at the next meeting the proprietors would proceed to a division of it "among us all!"

But at the following meeting, held in January, 1710,

<sup>1</sup> *Minutes of the Council of Proprietors of West Jersey*, bk. ii, p. 53.

<sup>2</sup> Since Cornbury's time the council had acted in accordance with the act of 1704 requiring that purchases should be made only on license

Morris had evidently recovered his influence, for it was formally voted that, since the Indian purchase already made fell far short of the amount expected, a certificate should be issued to Morris to buy from the natives all the lands above the Falls which remained unpurchased. He was to act, nevertheless, in trust for "the Society" and general proprietors.<sup>1</sup> The council, however, had to write to him later asking for a report on his proceedings as well as a statement as to the quantity of land he had secured for the Society.

A new and highly important development now appeared in the opening of negotiations between the council and Col. Daniel Coxe.<sup>2</sup> In March, 1711-12, the council wrote a courteous letter to Coxe, stating that he might have 5000 acres in the new purchase and expressing the wish "to cultivate a good understanding." Coxe was asked, nevertheless, to send his deeds to have them minuted according to "our usual custom," to pay his proportion of the Indian purchase and to draw lots with the others for the location of his claim. Delegates were even sent to deliver the communication to Coxe personally, but could not do so on their first visit "by reason of his being in Bedd."

On the next day, however, the Colonel, who was now evidently awake, required 10,000 acres. He asked for 5,000 acres "certain" "in his former Pretended Survey," but for the other 5,000 he was willing to take a lot and pay his part of the purchase price. For his deeds he referred the council to the secretary's office, where they were on record. To this message the council replied that Coxe could have 5,000 acres and no more, that being the amount that had satisfied William Penn. If there was any surplus

after the allotments were surveyed, Coxe might come in for a further proportion with the others.<sup>1</sup> To this ultimatum the Colonel replied, "I thank the gentlemen. I shall not trouble myself further about it."

But the council was really anxious for an arrangement, and in another message told Coxe that for the sake of a good understanding they were willing to concede him 8000 acres. But Coxe's only answer was that when the business of the board was over he desired to discourse with them "in order to ask some questions, etc."<sup>2</sup>

Meanwhile the council had proceeded to the division of the Indian purchase about which there had been so much discussion. Seventy-seven lots were prepared for the persons to whom the council had authorized warrants, and these were now duly drawn. Yet the allotment gave rise to contention, for John Wills, who had succeeded Biddle as vice-president of the council, not only refused to sign the lots, but deserted the board and withdrew without adjournment "or any cause." In order to avoid further confusion John Kay was chosen as vice-president, and it was ordered that the warrants for taking up the lands distributed should be signed by all the members of the council (except the surveyor) or by so many of them as could be conveniently had.<sup>3</sup>

The surveyor was again instructed as to his work in laying out the allotments. The tracts were to adjoin each other so that no spaces were left, and all surveys were to be laid out in straight lines. Each surveyor was to be at-

(by himself or deputy), for twenty-four hours attendance by the surveyor, the land was to be laid out for the owner of the next lot and the absentee must wait until the end of that draft of lots. The surveyor was to begin work on April 23, next, (1712).<sup>1</sup>

But while the council of proprietors was taking these important steps the political struggle between Governor Hunter and the old party of Cornbury had begun, and had already had its influence upon proprietary affairs. In November, 1711, Jeremiah Basse, the secretary of the province, although directed by the governor to qualify Thomas Gardiner as surveyor-general, refused to allow him to take the usual attestation on the ground that the law of England did not permit persons to qualify in that way for offices of profit, and that moreover the governor's directions had spoken only of qualification by oath.<sup>2</sup> He wrote also to the governor that *caveats* had been entered against Gardiner by both Col. Coxe and Daniel Leeds, formerly surveyor-general.<sup>3</sup> Gardiner, on the other hand, represented to Hunter that the efforts against him were due to the fact that Basse and Coxe knew that he would not commit frauds to oblige them, as Daniel Leeds had frequently done.<sup>4</sup>

Meanwhile, as a further manifestation of the activity of the partisans of Coxe, a protest had been drawn up against the exclusive and "dispotical" power assumed by the council of proprietors in undertaking to inspect and pass judgment on all land titles in West Jersey. The protest declared that the council had authority to dispose of no more than their own particular proprietary shares. It was signed by sixteen persons claiming to be proprietors among whom were Daniel Leeds, Abraham Hewlings, and John Gosling.<sup>5</sup>

But the campaign of Coxe did not develop as might have been expected into a further attack upon the council as the engine of the Quaker interest. The annual election of the council, held in the spring of 1712, resulted in the choice of Col. Coxe himself with John Wills, Peter Fretwell, Thomas Stevenson, and Joshua Humphreys for Burlington,<sup>1</sup> while John Budd and Joseph Kirkbride were of those chosen at Gloucester.<sup>2</sup> The election meant that Coxe was in control of the council, for he was forthwith made its president. John Wills who had deserted the recent council was installed as clerk, in place of John Reading.<sup>3</sup> And though the new board did not go so far as to turn Thomas Gardiner out of his office, it coupled Daniel Leeds with him as authorized surveyor.<sup>4</sup> What causes had brought about the revolution in the council we can only surmise. It seems probable that Coxe had obtained the support not only of those who had regularly followed him, but also of persons like Wills who were disgruntled over the recent allotments in the new Indian purchase.

At any rate there were important results. Directly after the election, and without the attendance of the members chosen at Gloucester, the council held a session and voted that the former council had acted too hastily and irregularly with regard to the surveying of the new purchase.<sup>5</sup> An order was sent immediately to Gardiner to prevent him and all other surveyors from making any further surveys therein, and notice of the action was given to the public. At the next meeting it was further ordered that a *caveat* be entered in the secretary's office to prevent the recording of any such surveys till the council gave its consent.<sup>6</sup>

<sup>1</sup> *New Jersey Archives*, vol. iv, p. 152.



The new council then showed its real hand by deciding that Daniel Coxe, Peter Sonmans, and Thomas Stevenson should have 10,900 acres in the new purchase to be laid out in as regular a form as the nature of the place they should pitch upon permitted. It was, however, to be clear of all the surveys lately made, and the holders engaged to renounce all further claims in the new purchase and to pay their share of the purchase money.<sup>1</sup> A little later, Coxe and Sonmans were authorized to take up a further tract of 5,000 acres,<sup>2</sup> but the latter soon resigned his claim to his partner.<sup>3</sup> In the December meeting, however, Sonmans applied for a warrant for 20,000 acres in any place already purchased, basing his claim upon a propriety bought by his father from Edward Byllinge. The council at once granted a warrant.<sup>4</sup>

But meanwhile the council had met opposition from John Reading, its former clerk. The new board had ordered Reading to deliver the Indian deeds for "the new Indian Purchase," together with the minutes, books, and papers, belonging to the proprietors. Yet he hesitated to obey. After endeavoring to delay by requesting time to consider, Reading, however, finally agreed to give the deeds to the secretary that they might be recorded and then made over to the person appointed by the council of proprietors.<sup>5</sup> In reply to this proposition the council resolved that they had always been of the opinion that all deeds should be entered at the secretary's office, but, as the secretary would not return for five days and as they feared that meanwhile ill use might be made of the deeds, they insisted that the records be delivered at once.<sup>6</sup> This vote seems to have been ef-

the permanent hostility of the board, as upon the death of Thomas Gardiner, John Reading Jr. was chosen surveyor-general in his stead.<sup>1</sup>

At length, in the December meeting of 1712, the new surveyor-general, who had been formerly engaged in the work as deputy to Gardiner, submitted, by order of the council, an account of the surveys already made in "the new Indian Purchase."<sup>2</sup> There were thirty-three of these, chiefly for amounts between one hundred and five hundred acres. Coxe had 4,170 acres; Gardiner's heirs, 2,225; William Penn, 5,000; and William Biddle, tracts of 1350 and 1665.

But one of the earliest acts of the Coxe régime was to set on foot a further Indian purchase with a view to making a fourth proprietary dividend.<sup>3</sup> The first difficulty to be encountered, however, was in obtaining from the governor the required certificate to purchase of the natives, for it must be remembered that Hunter was already at swords' points with Col. Coxe. Objection was at once entered by Willocks, and by Thomas Byerly, both of whom held interests in West Jersey, against the issue of the license.<sup>4</sup> Hunter also received a protest from Morris.<sup>5</sup> The governor, however, informed the West Jersey council of the reasons offered against them, and they presented answers.<sup>6</sup> They informed Hunter, moreover, that there was still wanting 200,000 acres to accommodate those proprietors who were behind on their first dividend.<sup>7</sup> The result was that the governor granted the council his certificate.<sup>8</sup>

The council then gave public notice of its project that all proprietors so inclined might join in the purchase.<sup>1</sup> But immediately afterward it gave an object lesson of its new business methods by the vote that Col. Coxe should have first choice of 15,000 acres in one entire tract of the land to be acquired. John Wills was to come in for second choice of 862 acres, and Peter Fretwell was third for 700. Then came Thomas Stevenson, who was to have 2000 acres, Joseph Kirkbride, whose share was 6,000, and others in designated order.<sup>2</sup>

Reading and Stevenson were deputed to view the lands in the northern part of the province the purchase of which was contemplated, and to them with Kirkbride was committed power to treat with the natives and to secure such lands as they deemed valuable. But the council had difficulties in securing ready funds to carry through the transaction. When the project had first been taken up a subscription of £26 6s. had been raised to buy Indian goods.<sup>3</sup> But this contribution was of course merely to cover preliminary expenses. A considerable debt was soon contracted, and in the meeting of March, 1712-13, an appeal had to be issued to the most considerable proprietors to meet and contribute.<sup>4</sup> Yet even this appeal did not give a satisfactory result, and the council was finally obliged, after full consideration of ways and means, to empower Stevenson and Reading to sell 1000 acres of land, or as much as was wanting for the payment of the natives.<sup>5</sup>

But while the council was thus engaged, occurred the annual election of 1713. Coxe and his four colleagues were, however, again returned for Burlington, but the pro-

<sup>1</sup> *Minutes of the Council of Proprietors of West Jersey*, bk. iii, p. 17.

<sup>2</sup> *Ibid.*, pp. 34, 36.

<sup>3</sup> *Ibid.*, p. 7.

<sup>4</sup> *Ibid.*, p. 36.

<sup>5</sup> *Ibid.*, pp. 43, 44.

prietors at Gloucester selected John Reading, Richard Bull, John Budd, and James Logan. The appearance of the latter gentleman, widely known as the representative of William Penn, was undoubtedly a matter of importance for the proprietorship of West Jersey.<sup>1</sup> After the board met it had to consider a dispute as to the election of Bull. But to save time it decided that both Bull and Kirkbride, the rival candidate, should sit and vote. Col. Coxe was re-elected as president, but the Quaker, Peter Fretwell, became vice-president. Wills was again clerk and recorder.<sup>2</sup>

Reading and Stevenson now reported that they had made several purchases from divers Indian chiefs by which the latter had given up all their rights in West Jersey.<sup>3</sup> Thereupon the council made public advertisement of the purchase and the apportionment of the fourth dividend.<sup>4</sup> All desiring to take part were ordered to meet the council on October 20th at Burlington to enter the quantities of land to which they were entitled and to provide for the payment of their share of the purchase money.

This meeting was duly held, and various claims entered and approved.<sup>5</sup> But it was further agreed that, as several of the proprietors were at a distance, further notice be given, and that all who paid their shares before November 20th should be allowed to come in on equal terms.<sup>6</sup> Even with this concession, however, the result appears to have been considered so unsatisfactory that in the spring of

<sup>1</sup> Logan was for a long time treasurer of the council.

<sup>2</sup> *Minutes of the Council of Proprietors of West Jersey*, bk. iii, p. 41.

<sup>3</sup> *Ibid.*, p. 45.

<sup>4</sup> Like the earlier dividends this was for 5000 acres on a propriety.

1714 the council, which had not been radically changed in personnel by the yearly election, thought best to extend further the time within which payment should be made, and to give formal assurance that the apportionment of the lands would be impartial. This last declaration was in answer to some who had expressed doubts lest the tracts be not assigned fairly.<sup>1</sup>

In September, 1714, the board perfected the arrangements for apportionment.<sup>2</sup> All the land was to be surveyed into lots of 1250 acres each. These were to be numbered. Then lots were to be drawn "faithfully," and, according to the numbers which they drew, the proprietors were to have warrants, and should proceed in the same order to have their lands surveyed in such places as they might choose. Those whose claims did not amount to 1250 acres were to join together. But none should take up above ten acres of meadow or rich low land to one hundred acres, and not less than the quantity contained in the respective lots should be laid out in one tract or parcel. Lots might be rejected, and those so acting might have warrants for their lands in any other part of the western division.

Among the numerous claims entered for the new dividend the largest were, of course, those of Penn and Coxe. Logan claimed for Penn twelve proprietries, ten secured from Fenwick, Elbridge, and Warner, one from Daniel Waite, and another purchased in 1697 from William Hague and Philip Ford.<sup>3</sup> Colonel Coxe claimed 20,000 acres in right of the share undisposed of by Edward Byllinge at the time of his decease.<sup>4</sup> To support this claim he produced a deed from Gratia Bartlet, the surviving daughter of Byllinge, in confirmation of a former deed of 1691, granting to Dr. Daniel

Coxe all of Byllinge's remaining interests in West Jersey. But the council held that, because of the generally published account that Edward Byllinge had disposed of all his ninety-hundredths of West Jersey before his death, it would not be safe to allow Col. Coxe's claim till it more clearly appeared that Byllinge at his death had a right to any lands then not alienated.

Col. Coxe then produced an account from several lists that in 1676 Byllinge and trustees granted to Samuel Cole of London (haberdasher), and Benjamin Bartlet of London, (gentleman), one whole propriety. Also Byllinge and trustees in 1677 granted one whole propriety to the said Bartlet, Josiah Thomas, and Elizabeth Harris, three-sevenths for Bartlet, two-sevenths to Thomas, and two-sevenths to Elizabeth Harris. Coxe further produced a deed from Gratia Bartlet, conveying to Dr. Coxe all the estate of her said husand, and also another especially conveying his estate in West Jersey. These deeds bore the date of 1702. In addition Col. Coxe laid before the council deeds for three proprietries from Thomas Williams. By this formidable list of documents the board was convinced, and ordered the issue of Coxe's warrant.<sup>1</sup>

At length on October 9, 1714, the lots were drawn and recorded. The total area thus disposed of amounted to 205,374 acres.<sup>2</sup> The council then agreed that April 16th next be the day for the proprietors and the surveyor to begin the actual work of surveying the lots, or at least April 18th. The surveyor was to stay at least twenty-four hours after the survey of one lot before beginning the next and be

During the sessions of 1715 the council of which Col. Coxe was once more president, with John Kay as vice-president, was occupied chiefly with the ordering of further warrants and the approval of surveys returned. But the only serious difficulty shown by the records was in the case of a claim by George Willocks which was now disallowed though once held valid.<sup>1</sup>

But while the council of proprietors had thus been engaged in making its fourth dividend the political conflict between Governor Hunter and Colonel Coxe had been growing ever more bitter, and the supporters of the governor both in and out of the West Jersey proprietorship were only too ready to seize any mode of attack upon Coxe and those under his control. In February, 1713-14, Thomas Byerly delivered to Hunter in council a memorial complaining of Reading, Leeds, the council of proprietors, and the secretary.<sup>2</sup> Ten days later the council of proprietors appeared personally before the governor and delivered their answer.<sup>3</sup> But damaging evidence had been produced to show that Surveyor-General Leeds had altered records of survey in an improper manner.<sup>4</sup> Leeds, it will be recalled, had always been an especially subservient tool of Coxe and had made himself conspicuous as such during Cornbury's administration. After investigation the royal council naturally declared that Leeds had been guilty of many frauds, and it was ordered that he be discharged from acting further as surveyor-general.<sup>5</sup> The attorney-general was also authorized to prosecute him upon information. But Alexander Griffith deliberately connived at his escape.<sup>6</sup> Upon

<sup>1</sup> *Minutes of the Council of Proprietors of West Jersey*, bk. iii, p. 133 *et seq.*

<sup>2</sup> *New Jersey Archives*, vol. xiii, p. 516.

<sup>3</sup> *Ibid.*, vol. xiii, p. 524.

<sup>4</sup> *Ibid.*, vol. xiii, pp. 525, 526.

<sup>5</sup> *Ibid.*, vol. xiii, p. 551.

<sup>6</sup> *Ibid.*, vol. xiii, p. 560.

the removal of Griffith, Thomas Gordon was directed to renew the prosecution.<sup>1</sup> In 1716 the trial was at length held before the supreme court, but Leeds was acquitted.<sup>2</sup> The council of proprietors, however, made no effort to reinstate him as surveyor-general, for in 1714, John Reading, Jr., and Richard Bull were chosen in room of Leeds, and Thomas Gardiner, deceased.<sup>3</sup>

The attack upon Leeds was of course hardly a very serious blow to the council of proprietors. But in July 1715, that body received Governor Hunter's proclamation forbidding any person to act as proprietary register within West Jersey but James Smith, or as surveyor-general but James Alexander.<sup>4</sup> Smith and Alexander bore commissions for these posts from the West Jersey Society, but the governor and royal council recognized their claim to act for the entire West Jersey proprietorship.<sup>5</sup> No doubt the influence of Morris had much to do with the stand taken by Hunter as the former had held resolutely aloof from the work of the council of proprietors ever since it had come under control of Coxe. The West Jersey council appears to have been rather dazed by the blow, but decided to address Hunter on the subject and to inform him of "their condition and circumstances." Logan, Coxe, and Reading were named to prepare the address.<sup>6</sup>

Just at this point, however, occurred the rout of Coxe and his supporters in the seventh assembly, followed by the flight of the redoubtable colonel from the province, and his futile mission to England. These circumstances had



an immediate effect upon the proprietary concerns. The proprietary election for 1716 resulted in the choice at Burlington of Coxe, Logan, Wills, Deacon, and Lewis Morris, while Reading, Bull, John Budd, and Humphries were selected at Gloucester. But Coxe was naturally not present when the board organized, and Lewis Morris was chosen as president with George Deacon, a Friend, and a supporter of Governor Hunter, as vice-president. All other officers were declared continued till further order. The council, however, took no immediate action regarding the recognition of James Smith and Alexander.<sup>1</sup> The re-organization meant, of course, the supplanting of the Coxe interest by that of Morris.

The conduct of the new council showed at once the turn affairs had taken, for it immediately passed resolutions to remove the misunderstanding which was declared to have existed for some time past between the board and the agent of the West Jersey Society. It was agreed that the agents of all absent proprietors should be admitted to vote in electing the council and in case the agent of "the Society" was not elected he was still to be admitted as a member of the council with the right to debate and to vote.<sup>2</sup>

In addition the council re-enacted and revised some of its rules regarding the keeping of its records. No certificate was to be issued by the proprietary recorder for obtaining the governor's license to purchase land of the Indians without the approval of the committee (council) signified by their clerk. In case the office of recorder and clerk were vested in different persons the order must be signed by both. The surveyor-general's office was to be held at Burlington, all records and drafts of surveys were to be

<sup>1</sup> *Minutes of the Council of Proprietors of West Jersey*, bk. iii, p. 154.

<sup>2</sup> *Ibid.*, p. 157.

lodged there, and all new warrants and surveys recorded. All warrants for the survey of land were to be directed to the surveyor-general or his deputy, and the said surveyor-general was to make a return of such surveys to the committee. The return was to be by them inspected and approved before being put on record by the recorder. All warrants previously granted and not yet returned were ordered to be executed by the officers to whom they were addressed, and returned accordingly, but great care was to be used in approving the return of surveys. Lastly it was agreed that notice be given to all proprietors who had not yet had their lots in the last purchase surveyed that they should cause them to be surveyed before January first. At that date the land was to be thrown open to all proprietors who showed title and paid their Indian purchase money.<sup>1</sup>

Morris next submitted the draft of survey of a tract of 91,895 acres, made in June, 1711, in accordance with the agreement made at that time by the council that he should make an Indian purchase of 100,000 acres for the Society. Morris said that the death of Thomas Gardiner, and the fact that he himself lived so far from Burlington had prevented the presentation of the survey before. In spite of the flimsy character of his excuse the survey was of course allowed and a warrant issued.<sup>2</sup> The energetic "agent" also "made it appear" that a considerable amount was still due the Society on the third dividend, but the council would take no action regarding the matter until the fourth dividend was cleared up.<sup>3</sup>

as usual did not attend the meetings regularly, and John Kay, who soon superseded Deacon as vice-president, generally presided.<sup>1</sup> In 1718 Dr. John Johnstone, so well known for his transactions in East Jersey, was chosen for the council from Burlington and served several terms.<sup>1</sup> John Wills continued as clerk.

But that the agent of the West Jersey Society continued to have influence is indicated in the formal election by the council of James Alexander as surveyor-general of West Jersey during good behavior.<sup>2</sup> It appears that the council, though willing enough to have Alexander as their surveyor, did not wish to recognize the commission granted to him in 1715 by the West Jersey Society, since the right to control the surveyor-generalship was a great element of strength to the council. To prevent trouble, however, and to avoid conflict with the powerful English proprietors, the council proposed to elect Alexander on condition that he would accept the appointment from them. Alexander agreed on the proviso that his appointment should be made in such a manner as to prevent later disputes.<sup>3</sup>

When the council thus selected Alexander, (who, it must be remembered, was also surveyor-general of East Jersey), it laid down certain definite conditions.<sup>4</sup> He was to keep the office at Burlington either personally or by a deputy for whom he was to be answerable, and who was to be approved by the board.<sup>5</sup> The regulations of the council regarding the issuing, return, and recording of warrants for survey were to be strictly observed, and Alexander, in accordance with an agreement previously made with Morris, was

<sup>1</sup> *Minutes of the Council of Proprietors of West Jersey*, bk. iii, p. 176.

<sup>2</sup> *Ibid.*, p. 182.

<sup>3</sup> *New Jersey Archives*, vol. v, p. 275.

to endeavor to collect and lodge all records relating to surveys in his office. He was not to take any records out of Burlington for a longer space than twenty days. Lastly, Alexander was not as surveyor-general of East Jersey, in case of any dispute, to presume to survey for any of the eastern division lands that had been regularly surveyed on proprietary rights of West Jersey.

After this somewhat unsatisfactory settlement of the relations between the council and the West Jersey Society the chief matter occupying the attention of the former body was for some time the boundary question. As early as April, 1709, the council of proprietors had voted that the boundary line between New Jersey and New York should be run as soon as possible and had named a committee to treat with the proprietors of East Jersey and with Lord Lovelace regarding the matter.<sup>1</sup> In March, 1712, information was brought that "patentees of York" were encroaching upon Jersey settlers and harassing them by suits. The council had thereupon ordered Thomas Gardiner to state the case to Hunter, to the end that he might stop the troubles and cause the division line to be run.<sup>2</sup> But this action appears to have had no immediate result.

Now in May, 1718, the council received a letter in Dutch signed by Jan Decker and other settlers on the upper Delaware holding under West Jersey, complaining that they had been abused by inhabitants of New York to make them submit to that government. The board forthwith resolved to lay the matter before the governor, and to do all it could to promote the running of the line.<sup>3</sup> A little

later the council went so far as to assume the expenses of John Budd and Richard Bull who were engaged in a suit regarding lands in East Jersey which had been claimed by New York.<sup>1</sup> These circumstances undoubtedly contributed in moving Hunter to call for the legislation in both of his provinces which provided for the boundary line commission.

Meanwhile James Logan had opened the negotiations with the proprietors of East Jersey regarding the running of the division line between the two Jerseys.<sup>2</sup> In so doing, however, Penn's representative seems to have acted without the formal authority of the council of his division. Indeed that body at first maintained that the Barclay-Coxe line was the only true one and that the attempt of certain of the East Jersey proprietors to alter it must lead to confusion and injury.<sup>3</sup> But led, it would seem, by Logan, they readily acquiesced in the passage of the act of assembly of 1718-19 which provided for the abandonment of the Barclay-Coxe line and all other accommodations, and a return to the quintipartite deed. Logan and Dr. Johnstone took the lead in carrying this measure through the assembly.<sup>4</sup> Logan held that this return to the original arrangement was the only just settlement, and moreover that, even if the West Jersey proprietors surrendered the apparent advantage of the Barclay-Coxe treaty, yet they would be compensated by the fact that "ye Titles of Land will be much better settled & their prices will considerably advance."<sup>5</sup> But his seasoning was clearly influenced by his knowledge that the Barclay-Coxe agreement "had no sufficient foundation in ye law to build upon."<sup>6</sup> The

<sup>1</sup> *Minutes of the Council of Proprietors of West Jersey*, bk. iii, p. 184.

West Jersey proprietorship was of course affected equally with that of East Jersey by the provisions of the act for running the division line, which required the regular maintaining of the surveyor-general's offices and the proper recording of all surveys, and which authorized the recovery of all land records held in private hands.<sup>1</sup> But in the case of West Jersey these articles simply gave legal sanction to well established proprietary regulations.

The West Jersey council proceeded promptly to arrange for the carrying-out of the act. It ordered the raising of £500 to cover the expenses of running the line by a charge of £5 on each propriety,<sup>2</sup> and wrote a letter to the proprietors of the eastern division not only setting a definite time for the meeting of the managers appointed to carry out the work, but also urging the need of prompt action.<sup>3</sup> Yet in spite of the fact that Logan, Lambert, and Reading, after meeting the East Jersey commissioners, themselves emphasized in their report the need of dispatch,<sup>4</sup> the matter hung fire. At the meeting of the council of May, 1721, there had to be further delay because a majority of the managers were not even present.<sup>5</sup> The reason for this negligence does not appear, though we know that John Reading was now dead and that Joseph Kirkbride had been inclined to the Coxe interest.

The delay was fatal to the whole project, for after the retirement of Governor Hunter Colonel Daniel Coxe returned to West Jersey prepared once more to take a leading part in public affairs. The proprietary election of 1723

<sup>1</sup> Allinson, *Statutes of New Jersey*.

<sup>2</sup> *Minutes of the Council of Proprietors of West Jersey*, bk. iii, p. 188 *et seq.*

<sup>3</sup> *Ibid.*, p. 203. The letter was given to David Lyell who happened to be in Burlington.

<sup>4</sup> *Ibid.*, p. 208.

<sup>5</sup> *Ibid.*, p. 223.

resulted in the choice of the said Colonel Coxe, John Gosling, Thomas Wetherill, Thomas Budd, and Titan Leeds at Burlington, and of John Hugg, John Mickle, Samuel Coale, and John Inskip at Gloucester to "agitate" the proprietary affairs for the ensuing year.<sup>1</sup> This choice gave Coxe again complete control. He resumed his place as president of the council, and Titan Leeds superseded Isaac Deacowe<sup>2</sup> as clerk.

Although Logan had informed Coxe fully as to the reasons of the former council for surrendering their claims under the Barclay-Coxe agreement,<sup>3</sup> Col. Coxe was entirely opposed to the act of 1718-19 for running the boundary line, as well as to all other arrangements made in his absence. Surveyor-general Alexander was at once ordered to give no further assistance to the commissioners of East Jersey for running the line, but to lay all papers and documents relating thereto before the council. If the East Jersians insisted on running the line, he was to inform Coxe at once.<sup>4</sup> Alexander submitted the records as ordered.<sup>5</sup> The new council resolved further that, as there was reason to apprehend that measures might be taken to secure the royal approval for the act for running the line, it would wait upon Governor Burnet and desire him to use his influence against such approval until the council could present its side of the case to the Crown.<sup>6</sup> In the October meeting of 1723 the council carefully prepared a bill for repealing the act in question and had it "writ fare" to lay before the assembly.<sup>7</sup> But, though Coxe did not have

<sup>1</sup> *Minutes of the Council of Proprietors of West Jersey*, bk. iii, p. 238.

<sup>2</sup> Deacowe had shortly before been chosen in room of John Wills.

<sup>3</sup> *New Jersey Archives*, vol. iv, p. 200.

sufficient influence to carry this measure through the assembly, his measures for blocking the running of the line were, for reasons explained in the last chapter, entirely successful for the time being. His practical nullification of the law of 1718-19 is certainly an interesting episode in the politics of the colony.

Meanwhile the re-establishment of Coxe's control over the council had given rise to certain vexatious difficulties. Decowe, upon order, delivered the papers in his possession to the newly elected clerk Titan Leeds.<sup>1</sup> But it appeared that a part of the minutes of the council were still in the hands of John Wills and John Reading, Jr., former clerks. The board ordered them to surrender their papers and resolved that all future clerks should at once make over their records to their successors.<sup>2</sup> But John Wills appeared personally before the council, and said that he would not deliver the papers until they had been "fairly transcribed." Then the board might have the originals.<sup>3</sup> After a delay of two months he was ready to give up his records, but did not do so until October, 1723.<sup>4</sup> Meanwhile the business of the council had been balked.

But John Reading still held out. In August, 1724, he sent a letter saying that he would copy the minutes, if he was paid for the copy. Otherwise he would deliver them to the new clerk to copy upon his security to return them.<sup>5</sup> Yet in April, 1727, Reading had still failed to deliver his records. He was now served with an order to do so,<sup>6</sup> but we can only infer that he complied.

<sup>1</sup> *Minutes of the Council of Proprietors of West Jersey*, bk. iii, p. 238.

<sup>2</sup> *Ibid.*, p. 240.



During this period the work of the council in passing upon claims presented and authorizing shares of the dividends was becoming much lighter. The third and fourth dividends were evidently nearly "cleared up." About the only incident relative to this side of the council's activity which seems of interest to the historical student is with reference to the grant of 20,000 acres at Amwell, formerly given to Peter Sonmans. This tract Sonmans had released to Col. Coxe, but the board of proprietors interceded with their president to surrender it altogether.<sup>1</sup> Coxe finally did so, taking a receipt. The release was ordered to be kept by the clerk. But later the matter caused further difficulty. It appeared that the survey had originally been made for Arent Sonmans in 1699, but he had left it to Peter, his heir, who had conveyed it to Col. Coxe in 1712. Later, however, by "inadvertance"<sup>2</sup> the said Peter Sonmans made it over to John Hadden, and three others in trust for the London Land Company. Accordingly in 1736 agents of the London Land Company requested warrants for 10,000 acres in West Jersey in lieu of the tract released by Sonmans. Under the circumstances the council saw fit to authorize the warrant for survey.<sup>3</sup>

Meanwhile came a new conflict regarding the surveyor-generalship. It might naturally be expected that the relations between Coxe and Alexander, the protegee of Hunter, would not be too cordial. Nevertheless after the re-establishment of the Coxe régime Alexander was continued as surveyor-general.<sup>4</sup> But he, of course, continued to make New York his headquarters and to act in West Jersey chiefly "by the hand of Isaac Decowe," his deputy. Evi-

dently Alexander was not in very close touch with the council. In March, 1723-4, upon attending their session he was informed that his deputies had taken unusual fees for surveying.<sup>1</sup> The board thereupon "settled" the fees, and entered them upon its records.

Finally in May, 1728, the council elected as surveyor-general in place of Alexander, John Burr, who had for some time previous been clerk.<sup>2</sup> In the letter informing Alexander, however, Thomas Budd, the new clerk, was careful to state that the step had been taken because the council had information that Alexander wished to give up the office and not because of any personal dislike or charges of misconduct. Alexander was, however, requested to surrender all records belonging to his post.<sup>3</sup> Burr also wrote a personal letter to Alexander, declaring that he had no inclination to act without his consent.<sup>4</sup>

But Alexander had actually no desire to give up so profitable a post, and would not make over the records. In May, 1728, the council therefore again wrote ordering him to do so.<sup>5</sup> Thus assailed, Alexander memorialized Governor Montgomerie.<sup>6</sup> With his usual ability he set forth all the facts in his case, including both his original commissioning by the proprietors in England, and his subsequent election by the West Jersey council to serve during good behavior. He stated that he had given the £1000 security required by the act of 1718-19, and that he had not been guilty of any misconduct in office. But he believed that there was a combination among some of the

<sup>1</sup> *Minutes of the Council of Proprietors of West Jersey*, bk. iv, p. 252.

<sup>2</sup> *Ibid.*, p. 296.

<sup>3</sup> *New Jersey Archives*, vol. v, pp. 211, 212.

<sup>4</sup> *Ibid.*, vol. v, p. 212.

West Jersey proprietors against him. Further he complained of Samuel Bustill,<sup>1</sup> deputy to James Smith, the provincial secretary, for having taken upon himself, without proper authority, to qualify another person for his office. A copy of Alexander's memorial was sent to Bustill.

In its meeting of November, 1730, the council of proprietors determined to give all the evidence in the controversy to John Kinsey, Jr., for his assistance and advice in negotiating the affair.<sup>2</sup> As a result a full answer was prepared to Alexander's charges.<sup>3</sup> But the council was obliged to fall back upon its general powers which they declared had been recognized by Hunter. They had always constituted a surveyor-general, nor did the proprietors in England have superiority over them in this respect. As for the action of Bustill he had been given power to qualify officers by a writ of *Dedimus potestatem*, and had only exercised his legal right.

Meanwhile the board has made choice of Samuel Scattergood as surveyor-general, and he had been qualified for the office.<sup>4</sup> The council then authorized him to recover all records from Isaac Decowe, and passed a lengthy resolution declaring that, in spite of the provision of the act of 1718-19, it did not appear that Alexander had given security.

At this interesting point the confusion of the proprietary minutes prevents us from seeing clearly in what way the matter was settled. But it is certain that Alexander was recognized as the legal surveyor-general in 1731,<sup>5</sup> and that

<sup>1</sup> Bustill was closely identified with Coxe.

<sup>2</sup> *Minutes of the Council of Proprietors of West Jersey*, bk. iv, misplaced pages.

he was re-elected in 1732.<sup>1</sup> We can be sure only that the attack upon him failed.

Further worry was now caused to the council by the report received in a letter from "the Jersey agent" to John Kinsey that the Lords of Trade had recommended to the Crown the confirmation of the act for running the boundary line. Coxe was therefore authorized to write to the agent and represent to him the injury sustained by West Jersey under the said act.<sup>2</sup> In addition Morris was requested to appoint a committee of East Jersey proprietors to confer with one from West Jersey regarding the line.<sup>3</sup> But though the act was really confirmed by the Crown the embarrassed East Jersey proprietorship was as helpless as ever to obtain its execution.

Meanwhile a demand developed among the proprietors of West Jersey for a fifth dividend. In August, 1736, this question was considered by the council, but referred to a further meeting.<sup>4</sup> But finally in March, 1736-37, the board determined to give notice of a fifth apportionment, and summoned all proprietors to meet on April seventh or May third next at the house of William Bickley in Burlington to consider the matter.<sup>5</sup> At the meeting in April it was then formally agreed that no warrant for the fifth dividend should be granted to any except with the limitation that the land be taken below the Falls of the Delaware at Trenton.<sup>6</sup> This matter having been determined, the issue of the new warrants began. The board was thus occupied when the union period came to an end.

Since the re-appearance of Coxe in 1733 there had of

cil of proprietors, but these hardly appear to have been of a very significant character. Colonel Coxe continued to hold the presidency and the prevailing influence. The vice-presidency was held first by Joshua Wright, and later by Thomas Whetherill, and in 1729 it was voted that when the president was absent the vice-president and any four members might proceed to business.<sup>1</sup> Such an arrangement was quite safe as little business was being transacted at this time. There were, however, numerous changes in the clerkship which was held after Titan Leeds by John Hugg, John Burr, Thomas Budd, and Samuel Scattergood. In 1732 the board itself consisted of Coxe, Peter Bard, Whetherill, John Burr, Scattergood, William Harrison, John Hinchman, John Ladd, and Clement Hall.<sup>2</sup>

Little remains to be said as to the general character of the work of the council. Throughout the period some little trouble had been caused by cases of trespass, and the cutting of trees on proprietary land.<sup>3</sup> But all things considered it is rather remarkable that there was not more complaint.

In its general business methods the council, as has been indicated, was painstaking. Yet the clumsy character of the proprietorship itself was always a handicap. In some cases it was evidently difficult to tell exactly what shares on properties still remained to be taken up; and new claims, sometimes of doubtful legality, were occasionally presented. A striking example occurred in 1719, when a memorandum was made in the minutes of a whole propriety conveyed in 1685 by Dr. Daniel Coxe to Walter Harris, merchant of Dublin. To the memorandum is attached a note, "Here is a propriety named; query whether any such, Prop<sup>ty</sup> ever

<sup>1</sup> *Minutes of the Council of Proprietors of West Jersey*, bk. iv, p. 161.

<sup>2</sup> *Ibid.*, p. 23.

<sup>3</sup> *E. g.*, *Ibid.*, bk. iii, p. 188.

came to knowledge of the Council of Proprietors before this time.”<sup>1</sup>

But that the record of the council was carefully kept down to 1729, the existing minute books are a proof. For a period after this date, however, the minutes seem to have been kept very carelessly. In May, 1736, the council itself ordered that since for “some years” the minutes had been kept in a loose and “promisias” manner the clerk should procure a book and transcribe the same.<sup>2</sup> If he did so the transcribing was only a limited success.

<sup>1</sup> *Minutes of the Council of Proprietors of West Jersey*, bk. iv, p. 196.

<sup>2</sup> *Ibid.*, p. 60.

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